SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934.

No. 670

TEXAS AND NEW ORLEANS RAILROAD COMPANY, THE TEXAS AND PACIFIC RAILWAY COMPANY, ABILENE & SOUTHERN RAILWAY COMPANY, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

VOL. I

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[fol. 1]

IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF MISSOURI

CAPTION

UNITED STATES OF AMERICA, *Sct.:*

Be it remembered that heretofore, to-wit, at the regular November term of the United States District Court for the Western Division of the Western District of Missouri, and on the 2nd day of February, 1934, there was filed in the office of the Clerk of said Court a Bill of Complaint in the cause wherein Texas and New Orleans Railroad Company; The Texas and Pacific Railway Company; Abilene & Southern Railway Company; The Denison and Pacific Suburban Railway Company; The Pecos Valley Southern Railway Company; The Weatherford, Mineral Wells & Northwestern Railway Company; Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees, The Chicago, Rock Island and Pacific Railway Company and The Chicago, Rock Island and Gulf Railway Company, Debtors; L. W. Baldwin and Guy A. Thompson, Trustees, Missouri Pacific Railroad Company, New Orleans, Texas & Mexico Railway Company, The Beaumont, Sour Lake & Western Railway Company, The St. Louis, Brownsville and Mexico Railway Company, and International-Great Northern Railroad Company, Debtors; J. M. Kurn and John G. Lonsdale, Trustees, St. Louis-San Francisco Railway Company, Debtor; St. Louis, San Francisco and Texas Railway Company; Fort Worth & Rio Grande Railway Company; Missouri-Kansas-Texas Railroad Company; Missouri-Kansas-Texas Railroad Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; Fort Worth and Denver City Railway Company; The Wichita Valley Railway Company; Burlington-Rock Island Railroad Company; The Colorado and Southern Railway Company; The Atchison, Topeka and

Santa Fe Railway Company; Gulf, Colorado and Santa Fe Railway Company; Panhandle and Santa Fe Railway Company; Roscoe, Snyder and Pacific Railway Company; Kansas, Oklahoma & Gulf Railway Company; Midland Valley Railroad Company; Fort Smith and Western Railway Company; L. B. Barry, Jr., Receiver; The Kansas City Southern Railway Company; Texarkana and Fort Smith Railway Company; Louisiana & Arkansas Railway Company; Louisiana, Arkansas & Texas Railway Company; [fol. 2] Illinois Central Railroad Company; and The Yazoo and Mississippi Valley Railroad Company are Plaintiffs and the United States of America is Defendant.

IN UNITED STATES DISTRICT COURT

INTERVENTION OF INTERSTATE COMMERCE COMMISSION—Filed March 9, 1934

To the Honorable Judges of said Court:

In accordance with the provisions of Section 212 of the Judicial Code, 36 Stat. L. 1150 (U. S. Code, Supp. II, Title 28, Sec. 45a), we hereby enter the appearance of the Interstate Commerce Commission, as a party defendant, and of ourselves as its counsel, in the above-entitled suit.

Daniel W. Knowlton, Chief Counsel. Nelson Thomas, Attorney.

[File endorsement omitted.]

Thereafter on March 12, 1934, an Amended Bill of Complaint was filed by leave of Court.

Said Amended Bill of Complaint is as follows:

In the

District Court of the United States

WESTERN DISTRICT OF MISSOURI,

WESTERN DIVISION

No. 2449, in Equity

TEXAS AND NEW ORLEANS RAILROAD COMPANY ET AL.,
Petitioners,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

AMENDED BILL OF COMPLAINT

J. H. TALLICHET,
G. H. MUCKLEY,
H. H. LARIMORE,
CHAS. M. SPENCE,
GEO. W. HOLMES,
A. B. ENOCH,
WALLACE T. HUGHES,
T. D. GRESHAM,
R. S. SHAPARD,
SAMUEL W. LANCASTER,
ROBERT WILKINS THOMPSON,
Solicitors for Petitioners.

HACKNEY & WELCH,
Resident Solicitors.

LANCASTER PRINTING COMPANY—*Law Brief Printing*—Dallas, Texas

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In the

District Court of the United States

WESTERN DISTRICT OF MISSOURI,

WESTERN DIVISION

No. 2449, in Equity

TEXAS AND NEW ORLEANS RAILROAD COMPANY ET AL.,
Petitioners,

vs.

THE UNITED STATES OF AMERICA,
Defendant.

AMENDED BILL OF COMPLAINT

To the Honorable the Judges of the District Court of the United States for the Western District of Missouri, Western Division:

Texas and New Orleans Railroad Company; The Texas and Pacific Railway Company; Abilene & Southern Railway Company; The Denison and Pacific Suburban Railway Company; The Pecos Valley Southern Railway Company; The Weatherford, Mineral Wells & Northwestern Railway Company; Frank O. Lowden,

James E. Gorman, and Joseph B. Fleming, Trustees, The Chicago Rock Island and Pacific Railway Company and The Chicago, Rock Island and Gulf Railway Company, Debtors; L. W. Baldwin and Guy A. Thompson, Trustees, Missouri Pacific Railroad Company, New Orleans, Texas & Mexico Railway Company, The Beaumont, Sour Lake & Western Railway Company, The St. Louis, Brownsville and Mexico Railway Company, and International-Great Northern Railroad Company, Debtors; J. M. Kurn and John G. Lonsdale, Trustees, St. Louis-San Francisco Railway Company, Debtor; St. Louis, San Francisco and Texas Railway Company; Fort Worth & Rio Grande Railway Company; Missouri-Kansas-Texas Railroad Company; Missouri-Kansas-Texas Railroad Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; Fort Worth and Denver City Railway Company; The Wichita Valley Railway Company; Burlington-Rock Island Railroad Company; The Colorado and Southern Railway Company; The Atchison, Topeka and Santa Fe Railway Company; Gulf, Colorado and Santa Fe Railway Company; Panhandle and Santa Fe Railway Company; Roscoe, Snyder and Pacific Railway Company; Kansas, Oklahoma & Gulf Railway Company; Midland Valley Railroad Company; Fort Smith and Western Railway Company; L. B. Barry, Jr., Receiver; The Kansas City Southern Rail-

way Company; Texarkana and Fort Smith Railway Company; Louisiana & Arkansas Railway Company; Louisiana, Arkansas & Texas Railway Company; Illinois Central Railroad Company; and The Yazoo and Mississippi Valley Railroad Company, as petitioners, in their own behalf and in behalf of such other railroad companies, receivers, or trustees as may have an interest in the subject-matter hereof and may by proper proceedings become parties hereto, complaining of The United States of America, as defendant, leave thereunto having been duly granted, hereby file their amended bill of complaint, and respectfully represent:

I. Parties

Except as otherwise alleged in the immediately succeeding paragraphs hereof each of your petitioners is a corporation duly organized, incorporated, and existing under the laws of the State of Texas, and is a citizen of that state.

The Texas and Pacific Railway Company is a railway corporation duly created, organized, and now existing under and by virtue of the laws of the United States, to wit, an Act of Congress approved March 3, 1871, and Acts amendatory thereof and supplemental thereto.

The Chicago, Rock Island and Pacific Railway Company is a railway corporation duly organized, incor-

porated, and now existing under the laws of the States of Illinois and Iowa, and is a citizen of those states.

Missouri Pacific Railroad Company, St. Louis-San Francisco Railway Company, Missouri-Kansas-Texas Railroad Company, St. Louis Southwestern Railway Company, and The Kansas City Southern Railway Company are respectively railway corporations duly organized, incorporated and now existing under the laws of the State of Missouri, and each is a citizen of that state.

New Orleans, Texas & Mexico Railway Company is a railway corporation duly organized, incorporated, and existing under the laws of the State of Louisiana, and is a citizen of that state.

The Colorado and Southern Railway Company is a railway corporation duly organized, incorporated, and existing under the laws of the State of Colorado, and is a citizen of that state.

The Atchison, Topeka and Santa Fe Railway Company is a railway corporation duly organized, incorporated, and existing under the laws of the State of Kansas, and is a citizen of that state.

Kansas, Oklahoma & Gulf Railway Company is a railway corporation duly organized, incorporated, and existing under the laws of the State of Oklahoma, and is a citizen of that state.

Midland Valley Railroad Company and Fort Smith and Western Railway Company are respectively railway corporations duly organized, incorporated, and existing under the laws of the State of Arkansas, and each is a citizen of that state.

Louisiana & Arkansas Railway Company is a railway corporation duly organized, incorporated, and existing under the laws of the State of Delaware, and has its domicile in the State of Louisiana.

Illinois Central Railroad Company is a railway corporation duly organized, incorporated, and existing under the laws of the State of Illinois and is a citizen of that state.

The Yazoo and Mississippi Valley Railroad Company is a railway corporation duly organized, incorporated, and existing under the laws of the States of Mississippi, Tennessee, and Louisiana, and is a citizen of each of those states.

Frank O. Lowden, James E. Gorman, and Joseph B. Fleming are trustees of the properties of The Chicago, Rock Island and Pacific Railway Company and The Chicago, Rock Island and Gulf Railway Company, Debtors, by appropriate order or orders duly entered by the United States District Court for the Northern District of Illinois.

L. W. Baldwin and Guy A. Thompson are trustees of the properties of Missouri Pacific Railroad Company, New Orleans, Texas & Mexico Railway Company, The Beaumont, Sour Lake & Western Railway Company, The St. Louis, Brownsville and Mexico Railway Company, and International-Great Northern Railway Company, Debtors, by appropriate order or orders duly entered by the United States District Court for the Eastern District of Missouri.

J. M. Kurn and John K. Lonsdale are trustees of the properties of St. Louis-San Francisco Railway Company, Debtor, by appropriate order or orders duly entered by the United States District Court for the Eastern District of Missouri.

L. B. Barry, Jr., is the duly appointed and acting receiver of the properties of Fort Smith and Western Railway Company.

The United States of America is made a party defendant as directed by the Congress of the United States pursuant to an Act of October 22, 1913, known as the Urgent Deficiencies Appropriations Act (38 Stat. L., 218, ch. 32; Title 28, §§ 43-48, United States Code, 1926).

As hereinafter set forth, this suit is brought for the purpose of enjoining and setting aside certain orders of the Interstate Commerce Commission (herein-

after called "Commission") made and entered in or with relation to divers consolidated proceedings growing out of complaints filed with said Commission concerning the rates on horses and mules, in carloads, as hereinafter more fully set forth, against these petitioners (or their predecessors in name or title) and various other common carriers named as defendants or respondents in one or more or all (as the case may be) of said complaints. Since the filing of said complaints many of the defendant carriers named therein, and in the reports and orders of the Commission entered in the proceedings so initiated, have passed under the control of and/or have leased their properties to others of said defendants, including your petitioners, the corporate names of others have been changed, and some, which do not appaer as petitioners herein, are in fact not reached or directly affected by said orders. The railway mileage owned and/or operated by your petitioners comprises substantially all the railway mileage in so-called southwestern territory, which constitutes roughly the States of Arkansas, Louisiana, Oklahoma, and Texas, as well as southern Missouri and southern Kansas.

Said orders against which this complaint is directed were entered by the Commission in said consolidated proceedings on the 24th day of July, 1933, and on the 11th day of December, 1933, respectively, and are fully set forth and attached to this bill as exhibits thereto and with the same effect as if fully set forth in the body of the bill.

II. Jurisdiction and Venue

The complainant in cause No. 13001 before the Commission, that being one of the consolidated complaints in or with relation to which the orders hereby sought to be enjoined, set aside, suspended and annulled were entered, is The Chamber of Commerce of Kansas City, Mo., a corporation organized and existing under the laws of the State of Missouri and a resident of Kansas City, Missouri, in the Western Division of the Western District of Missouri. This suit is brought in said District in accordance with the provisions of said Urgent Deficiencies Appropriations Act of October 22, 1913, and petitioners invoke the jurisdiction of this Court under the provisions of said Act, of § 207 of the Judicial Code (Title 28, § 41, United States Code, 1926), and of the Interstate Commerce Act (Title 49, § 1 et seq., United States Code, 1926).

III. Proceedings Before the Commission

The orders of the Commission which are attacked and sought to be enjoined and set aside herein were made and entered in or with relation to a series or group of complaints heretofore filed with said Commission by various parties, including said The Chamber of Commerce of Kansas City, Mo., wherein among others the rates on carload shipments of horses and mules from and to numerous stated points in the States of Missouri, Arkansas, Louisiana, Kansas, Oklahoma, Texas, Colorado and New Mexico, as hereinafter more fully set forth, were assailed. Said complaints, together with other complaints relating to the carload rates on horses and mules in the States of Nebraska and South Dakota were by orders duly entered by said Commission consolidated for consideration and disposition, and the orders herein sought to be set aside and annulled were entered in or with relation to such proceedings as so consolidated.

One of the complaints included in the aforesaid consolidated proceedings is cause No. 11018 on the docket of said Commission, filed on November 15, 1919, wherein the Wichita Board of Commerce and others, complaining of Director General of Railroads, as Agent, Alexandria and Western Railway Company, your petitioners (or their predecessors in name or title) and

divers other common carriers, assailed the carload rates on horses and mules from Wichita, Kansas, to points in Arkansas, Louisiana and Texas, as well as to Memphis, Tennessee, and points based thereon. It was alleged that the assailed rates were unreasonable and unduly prejudicial to the extent that they exceeded for the same or comparable distances the rates from Kansas City and other points taking the Kansas City rates to the same destinations, and also that in some instances these rates exceeded the aggregate-of-intermediate rates contemporaneously in effect, contrary to the provisions of § 4 of the Interstate Commerce Act (hereinafter called the Act). By its report and order made and entered in said complaint on March 1, 1921, and reported in 60 I. C. C. Reports, at pages 536-42, the Commission held that the assailed rates were unreasonable to the extent that they exceeded the aggregates-of-intermediate rates and were unduly prejudicial to the extent that they exceeded the rates contemporaneously maintained on like traffic from Kansas City to the same destinations, and to Memphis to the extent that they exceeded the rates contemporaneously in effect from Kansas City by more than $10 per standard car, with rates on larger cars in proportion.

Pursuant to the findings and orders so made and entered by the Commission, the defendant carriers proceeded to revise their assailed rates on horses and

mules, but upon protest of the Chamber of Commerce of Kansas City, Mo., the rates so published were suspended by the Commission in its Investigation and Suspension Docket No. 1483, entitled *Horses and Mules From Kansas City, Missouri.* Thereafter, by its order of May 29, 1922, entered in that proceeding, the Commission found that the published rates did not exceed the limit of reasonableness, but that without corresponding changes in the rates from St. Louis they did result in undue prejudice to Wichita and Kansas City shippers and in undue preference of St. Louis shippers, and were therefore held to be not justified. Upon petition of the respondents in said Investigation and Suspension Docket No. 1483, the proceeding was thereafter reopened by the Commission for further consideration and decision, as will be hereinafter set forth.

By complaint filed with the Commission July 21, 1921, in its cause No. 13001, The Chamber of Commerce of Kansas City, Mo., vs. Alexandria and Western Railway Company, your petitioners (or their predecessors in name or title) and divers other common carriers, the carload rates on horses, mules, asses and burros from Kansas City to points in Texas and Louisiana were alleged to be unreasonable, unjustly discriminatory, unduly preferential and in excess of the aggregate-of-intermediates provision of § 4 of the Act. By its report

and order made and entered in that proceeding on April 26, 1924, and reported in 89 I. C. C. Reports, at pages 22-26, the Commission found that for the future the assailed rates would be unjust, unreasonable and unduly prejudicial to the extent that they exceeded the scale of rates set forth in the appendix to its said report.

By complaint filed February 19, 1921, wherein the Texas Livestock Shippers Protective League, a voluntary organization of livestock shippers to and from Fort Worth and other markets and places, together with numerous individuals named in the complaint, were complainants, and the Director General of Railroads, as Agent, Abilene & Southern Railway Company, the other petitioners herein (or their predecessors in name or title) and divers other common carriers were defendants, being cause No. 12358 upon the docket of the Commission, the carload rates on horses and mules between Fort Worth, Texas, and stations on the lines of the defendant carriers in Kansas, Oklahoma, Arkansas, Texas, that part of Louisiana west of the Mississippi River, that part of Missouri south of the Missouri River, that part of Colorado on and south of the lines of the Chicago, Rock Island & Pacific Railway Company and Union Pacific Railroad Company through Limon to Denver and on and east of the main line of the

Colorado & Southern Railway Company south of Denver through Pueblo and Trinidad to the Colorado-New Mexico state line, and that partof New Mexico on and east of the line of the Colorado & Southern Railway Company were assailed as being unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the aggregate-of-intermediates provision of § 4 of the Act.

By complaint filed on February 23, 1922, Ross Bros. Horse and Mule Company et al. vs. Union Pacific Railroad Company, Chicago, Rock Island and Pacific Railway Company, and Chicago, Rock Island and Gulf Railway Company, being cause No. 13619 upon the docket of said Commission, it was alleged that the carload rates on horses and mules between Fort Worth and other specified points were unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the aggregate-of-intermediates provision of § 4 of the Act, substantially to the same extent as was alleged in the aforesaid complaint in cause No. 12358.

By complaint filed March 4, 1922, Burnett-Yount Horse & Mule Company et al. vs. Abilene & Southern Railway Company, your petitioners (or their predecessors in name or title) and divers other common carriers, being cause No. 13627 upon the docket of said Commission, the carload rates on horses and mules between

points in Texas and points in the States of Louisiana, Arkansas, Oklahoma, Kansas, Missouri, Iowa, Illinois, Nebraska, Wyoming, Colorado, New Mexico, Arizona and California, as well as Memphis, Tennessee, and Vicksburg and Natchez, Mississippi, were alleged to be unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the aggregate-of-intermediates provision and of the long-and-short-haul clause of § 4 of the Interstate Commerce Act.

Following the taking of testimony in causes Nos. 12358, 13619 and 13627, the Commission reopened and consolidated for consideration and disposition therewith the aforesaid complaints in causes Nos. 11018 and 13001, and also the proceedings in its Investigation and Suspension Docket No. 1483, whereupon, by its report and order made and entered on November 10, 1924, and reported in 93 I. C. C. Reports, at pages 479-98, the Commission directed and required the carriers defendant in said proceedings (including your petitioners or their predecessors in name or title) to establish, maintain and observe between the three market points of Kansas City, Missouri, Wichita, Kansas, and Fort Worth, Texas, and points generally in the States of Kansas, Oklahoma, and Arkansas, Texas common-point territory (approximately the eastern half of Texas), that part of Louisiana west of the Mississippi River,

that part of Missouri south of the Missouri River, and those parts of Colorado and New Mexico previously described the scales of rates set forth in the appendix to its said report. The rates so prescribed were published by said defendants and became effective on May 20, 1925, and are those now in force and effect between points in that area.

In its said report of November 10, 1924, the Commission stated that the record before it was insufficient to enable it to determine the interstate rates to be applied to Fort Worth from Texas differential territory (approximately the western half of Texas) and from New Mexico, and in publishing rates in conformity with said report and order of the Commission the defendant carriers provided for the addition to the rate scales therein prescribed of certain arbitraries for that portion of the hauls of traffic in said Texas differential territory and New Mexico, but upon protest the rates or arbitraries so published to apply on the hauls in Texas differential territory and New Mexico were suspended by the Commission and made the subject of investigation in its Investigation and Suspension Docket No. 2389, entitled *Rates on Horses and Mules to, from and between Southwestern Points.*

Following the taking of testimony and due consideration thereof, by its report and order entered in its said

Investigation and Suspension Docket No. 2389 on July 30, 1925, as reported in 102 I. C. C. Reports, at pages 87-93, the Commission found and held that the suspended rates and schedules were not justified but authorized the carriers respondent therein to publish in lieu thereof a scale of differentials or arbitraries set out in Appendix C to its said report for application for that part of the hauls on the traffic in question in Texas differential territory and New Mexico, in addition to the basic southwestern rates, which authorized differentials or arbitraries were in due course published and made effective by said carriers, and are those now in force and effect.

By order entered on March 16, 1925, the Commission reopened the aforesaid consolidated proceedings for further hearing, but with respect only to "rates from or to points in Kansas, Colorado, and southern Missouri, respectively, to or from Wichita, Kans., Kansas City, St. Joseph, and St. Louis, Mo.," following which further hearings were held in Nos. 12358, 13619, and 13627, and thereafter a proposed report was prepared by one of the Commission's Examiners, namely, J. F. Eshelman, same being served upon the parties thereto on or about November 20, 1925, and exceptions thereto were in due course filed by the respective parties.

Thereafter by order entered on January 4, 1926, the Commission upon further consideration again reopened

the aforesaid consolidated proceedings for further hearing with respect to the reasonableness, lawfulness, and propriety of the assailed rates, and of the minimum weights in connection therewith. On the same date by order entered in a certain cause, entitled *The Nebraska Livestock Case*, being an investigation instituted by the Commission on its own motion as cause No. 13273 on its docket, and in cause No. 12268 on its docket, entitled *Board of Railroad Commissioners of the State of South Dakota* vs. *Chicago and North Western Railway Company*, each of such cases was likewise reopened by the Commission at its own instance and without any request therefor by any of the interested parties, and was assigned for further hearing with its cause No. 12358, but only with respect to the rates on horses and mules. (The orders under attack herein are not complained of so far as they relate to these two complaints, which do not deal with the rates in southwestern territory.)

Thereafter, following the taking of additional testimony at a further hearing held in October, 1928, in accordance with said order of the Commission and the preparation and filing of briefs by the parties, a proposed report prepared by one of the Commission's Examiners, to wit, one R. S. Simons, was served upon the parties to said consolidated proceedings on or about November 9, 1929, to which proposed report exceptions

were filed by the parties and said consolidated proceedings were later argued orally before the entire Commission on February 17, 1930.

Thereafter, but before any further report or order was made or entered in said consolidated proceedings, the Supreme Court of the United States on January 4, 1932, in the case of *Atchison, Topeka & Santa Fe Railway Company* vs. *United States*, rendered its decision, reported in 284 U. S. 248, wherein a certain order entered by the Commission in its cause No. 17000, Part 7, entitled *Grain and Grain Products*, and prescribing rates on grain and grain products throughout the western district of the United States, i. e., west of the Mississippi River, roughly spaeking, was held invalid because of the failure and refusal of the Commission to give consideration to changes in conditions subsequent to the termination of the hearings held therein that were brought about by and resulted from the general economic depression that began in the Fall of 1929. The Commission thereupon, by its order of February 1, 1932, again reopened on its own motion the aforesaid consolidated proceedings relating to the rates on horses and mules "for further hearing in all respects, at such time and place as the Commission may hereafter direct, for the purpose of supplementing the record already made." Accompanying the aforesaid order of February 1, 1932, the Commission addressed a

"Notice to the Parties" to said consolidated proceedings, which read as follows:

> "By the attached order the above-entitled proceedings are reopened for further hearing. The primary purpose of the rehearing is to show upon the record the changed conditions in the field of railroad operations and the horse and mule industry, in so far as those conditions may affect the rates to be here prescribed. A comprehensive record has already been made in these proceedings, so that it should not be necessary to undertake a re-trial of the issues already well presented in these cases, and it is apparent the most valuable showing will be as to changes in conditions. Evidence of a merely cumulative character on matters already covered by the present record should be avoided. The parties should carefully consider the available facts and endeavor to present at the hearing only those essential to a decision. No. 17000, Part 9, *Livestock —Western District Rates*, 176 I. C. C. 1, also has been reopened for further hearing, and duplication of effort may be avoided by the use herein of the new evidence in that proceeding, whenever possible, in the manner prescribed by the rules of practice.
>
> "Notice of the time and place of the hearing will be given later."

Further hearings in accordance with the said order and notice were held in May, 1932, but no further proposed report therein was served, nor additional oral argument permitted, and thereafter, to wit, on July

24, 1933, the Commission handed down its report on further hearing in said consolidated proceedings, same being reported in 195 I. C. C. Reports, at pages 417-54. An official printed copy thereof is annexed hereto as Exhibit A. In said report on further hearing the Commission found, among other things, that the maximum reasonable rates for the transportation of horses, mules, burros and asses between points in the territory generally involved in consequence of the allegations in the complaints and other proceedings, as hereinabove more particularly described, will be for the future 115 per cent of the rates on cattle from and to the same points prescribed in its cause No. 17000, Part 9, *Livestock—Western District Rates*, as aforesaid, subject to a minimum weight of 23,000 pounds per car, and that rates in excess thereof are and for the future will be unreasonable. The Commission further declared that its prior findings in these consolidated proceedings are modified accordingly, but at that time entered no order directing or requiring the defendant carriers to establish, maintain and observe the rates so prescribed as reasonable maxima, although they were advised that they would be expected to establish such rates within ninety days after the service of said report, to wit, on August 5, 1933.

Thereafter, on November 6, 1933, the carriers operating in southwestern territory, including these petition-

ers, prepared and filed with the Commission their petition for reconsideration and modification of the Commission's findings and conclusions in its said report on further hearing therein on July 24, 1933, and for further hearing, but by order dated December 11, 1933, the Commission summarily denied such petition and at the same time entered an order giving effect to the aforesaid findings made in its report on further hearing on July 24, 1933, and directing and requiring the defendant carriers to publish and establish the rates therein prescribed to apply on horses, mules, burros and asses on or before March 8, 1934, by publication not less than thirty days in advance of the effective date of such rates, a copy of the aforesaid orders being annexed hereto as Exhibits B and C, respectively.

Your petitioners would further represent that on November 10, 1924, at the time its initial report was rendered in these consolidated proceedings and in connection therewith, the Commission entered its Fourth Section Order No. 9059, whereby the defendant carriers in said consolidated proceedings were "authorized to establish and maintain over all routes between Fort Worth, Texas, Wichita, Kansas, Kansas City, Missouri, St. Joseph, Missouri, St. Louis, Missouri, and Oklahoma City, Oklahoma, on the one hand, and points in the territory described in the appendix to said report, on the other, the lowest rates prescribed or approved in the

said report as maximum rates over any route between the said points, and to maintain higher rates from, to, and between intermediate points, provided that the rates from, to, and between the said intermediate points shall not exceed the scales of rates prescribed in the said report as maximum rates for application to such intermediate points and shall in no case exceed the lowest combination." Said Fourth Section Order No. 9059 is reproduced in full as Exhibit D annexed hereto.

Likewise, in connection with the aforesaid order entered by the Commission in its Investigation and Suspension Docket No. 2389 on July 30, 1925, the Commission entered its Fourth Section Order No. 9183, whereby similar relief from the requirements of § 4 of the Act was accorded the respondent carriers in respect of the rates prescribed or authorized as to points in Texas differential territory and New Mexico, said Fourth Section Order No. 9183 being likewise reproduced as Exhibit E annexed hereto. On pages 448-49 of its said report on further hearing of July 24, 1933, under the topic of "Fourth Section Applications" the Commission made the following declarations and ruling:

> "Upon further hearing herein, no evidence was offered by the carriers in support of their applications. They state that application No. 461 has been covered by fourth-section order No. 9129, that ap-

plication No. 462 was withdrawn, and that applications Nos. 621, 673, and 678 have been covered by fourth-section orders Nos. 9059, 9183, and 9711.

"Fourth-section relief may be necessary in order that rates in conformity with the findings herein may be established. Accordingly, defendants may file applications for such relief as they may require in connection with the rates here prescribed. The above-numbered applications will be denied and the outstanding fourth-section orders will be vacated six months after the service of this report. In instances in which applications are filed within 90 days after service of this report, consideration will be given to the entry of an order granting temporary relief to aid the establishment of the rates in conformity with the findings herein made and to maintain such rates until final action upon such applications."

Accordingly, while no order requiring the establishment of rates in conformity with the findings therein made was entered, at the time the Commission handed down its said report on further hearing of July 24, 1933, it did enter on that date its Fourth Section Order No. 11340 giving effect to the ruling quoted above, same being reproduced as Exhibit F annexed hereto. Said Fourth Section Order No. 11340 was served upon your petitioners on August 5, 1933, and under the terms thereof would have become effective on February 5, 1934, but by order entered on January 6, 1934, the Commission postponed the effective date thereof to

March 8, 1934, thereby making same correspond with the effective date of its aforesaid order in these consolidated proceedings of December 11, 1933. Since the institution of this action the Commission at the instance of District Judge Albert L. Reeves has further extended the effective date of its orders herein assailed, whereby same are not to become effective until after the date of trial of this cause.

IV. Grounds for Relief

Petitioners further allege that the aforesaid orders of the Commission as set out in Exhibits C and F hereto attached are unlawful and void in the following respects, to wit:

—1—

The record before the Commission in the aforesaid consolidated causes on which the Commission based its said orders and the report accompanying same contains no substantial evidence to support either said orders or the Commission's findings in its report on further hearing upon which said orders are predicated.

—2—

In attempted justification of its finding that the rates on horses and mules in the territory to which the

complaints and proceedings against which this action is addressed relate are and will be for the future unreasonable to the extent that they are more than 15 per cent in excess of the rates heretofore prescribed for beef cattle and now in effect in southwstern territory, the Commission stated on page 446 of its report on further hearing (Exhibit A) that the "only" substantial transportation disadvantages of horses and mules as compared with other forms of ordinary livestock are a higher percentage of claims for loss and damage and a higher per car valuation, but elsewhere in the same report, in discussing on page 423 thereof volume of movement, production and values, the Commission found and admitted that the movement of horses and mules is not more than 3 to 4 per cent of the volume of the movement of edible livestock; and the record before the Commission affirmatively discloses other transportation differences between horses and mules as compared with edible livestock, among which are the following:

a) The movement of horses and mules is almost entirely in one direction, that is from the producing areas to the markets and the consuming points, whereas there is some movement of cattle, particularly of stockers, in a westerly direction from the markets to the ranges. This condition tends to lessen the empty movement of stock cars as respects the transportation of edible livestock.

b) The transportation and handling of horses and mules calls for the newest and best class of equipment, with high roofs which do not leak, and at unloading points for feed, water, and rest the best covered pens available must be used for horses and mules, especially during inclement weather to avoid sickness.

c) The movement of horses and mules is not steady but is sporadic, whereas the movement of edible livestock is more or less uniform throughout the year. The principal movement of horses and mules occurs during the Fall, when the carriers are burdened with the peak movement of traffic, particularly agricultural products. Also, unlike edible livestock, as pointed out below, horses and mules do not move in trainload lots but in smaller units of shipment and at consequent higher costs of transportation.

The Commission in its report and orders aforesaid wholly ignored each and every one of said material facts, the effect of which, if given due weight by the said Commission, would have been to require the fixing of materially different and substantially higher rates than those prescribed by the Commission for the transportation of horses and mules in southwestern territory, and the Commission, in ignoring said evidence, decided the issues before it arbitrarily, wrongfully, and contrary to the evidence.

—3—

The transportation of edible livestock within the territory aforesaid is to a large extent in train lots or lots of a substantial number of cars at one time, and said movement in train lots and less than train lots is substantial and fairly uniform throughout the year, whereas horses and mules are ordinarily shipped and transported in lots generally of one or two carloads. The volume of said movement of horses and mules is light, sporadic, and seasonal. There is no relationship with respect to the aforesaid matters which authorized or justified the fixing of a relationship or difference for the transportation of horses and mules of 15 per cent over the rates for like transportation of beef cattle in the Southwest, and the Commission in fixing that relationship acted unjustly, unreasonably, arbitrarily, capriciously, and contrary to the evidence before it.

—4—

The rates prescribed by said Commission to apply to edible livestock, including beef cattle, in the Southwest, which are the rates to which the Commission by its findings and orders herein has sought to relate the rates on horses and mules, were based only indirectly upon and largely in disregard of the onerous and unusual transportation conditions incident to the han-

dling of that traffic; on the contrary such rates were primarily influenced and governed by the distressful economic conditions that have prevailed in the cattle and edible livestock industry generally for many years past and which still prevail. Without any finding or evidence of the existence of a similarity of such economic conditions as between horses and mules, on the one hand, and edible livestock, on the other, the Commission acted unjustly, unreasonably, arbitrarily, capriciously, and contrary to the evidence in ordering and requiring that the present rates published, maintained and observed by your petitioners for the transportation of horses and mules in the Southwest be reduced, and substantially so, to a level not more than 15 per cent above the subnormal and depressed rates heretofore prescribed to apply on beef cattle and other edible livestock in southwestern territory. These facts were brought to the notice of the Commission by your petitioners in their petition for rehearing and reconsideration dated November 6, 1933, as well as prior thereto, but same were arbitrarily ignored and disregarded by said Commission.

—5—

Beef cattle and other forms of edible livestock, other than dairy animals, are produced and marketed primarily and almost exclusively for slaughter and human

consumption, being sold and quoted on the market by the pound or per hundredweight, whereas horses and mules are produced and marketed almost exclusively for use as work animals, and are sold and quoted universally by the head. There is no market competition between these respective classes of livestock which calls for or justifies the maintenance of any defined relationship of transportation rates and charges applying thereto, respectively, and in undertaking to do so in the proceedings herein under review the Commission has acted unjustly, unreasonably, arbitrarily, capriciously, and contrary to the evidence.

—6—

In attempted justification of the findings and requirements of its report and orders herein assailed, the Commission states on page 446 of said report that it is illogical to prescribe rates on the horse and mule traffic unrelated to the rates on cattle, when the rates on hogs, sheep, and other ordinary forms of livestock are based on the fat or beef cattle rates. The Commission further finds and admits that a low level of rates on cattle is necessary to move those animals to the primary markets, and that competitive conditions have affected those rates, thereupon adding that the competitive conditions which affect the rates on cattle consigned to such markets "likewise must be considered" in pre-

scribing the rates on horses and mules. The Commission has made no finding that the competitive conditions which it admits necessitate a low level of rates on cattle prevail likewise as to horses and mules, and the evidence of record does not warrant such finding, wherefore the Commission's action in undertaking to reduce the rates on horses and mules in southwestern territory to 115 per cent of the corresponding rates on beef cattle is unjust, unreasonable, arbitrary, capricious, and contrary to the evidence. Furthermore, in prescribing or approving rates on horses and mules in other sections of the country the Commission has not found it illogical for such rates to be unrelated to those correspondingly applying on cattle, wherefore its findings and orders herein assailed are arbitrary, capricious, and without support in law.

—7—

In the aforesaid petition of the southwestern carriers for reconsideration and modification of the Commission's findings and conclusions in its said report on further hearing, such petition being dated November 6, 1933, said carriers directed the attention of the Commission to the fact that within the past twelve months, as recognized and commented upon in reports recently released by the United States Census Bureau and Department of Agriculture, and as developed at recent

hearings held by the Commission in other proceedings, there has been a very substantial upward trend in the prices of horses and mules, growing out of an increased demand therefor and a resultant scarcity of supply, which is directly contrary to the overproduction that continues to prevail with respect to edible livestock.

The present rates on edible livestock in the Southwest were and are depressed and subnormal rates, and were fixed by the Commission mainly because of the notoriously deplorable economic conditions which have prevailed and yet continue to prevail in that industry and with but slight regard to transportation standards, and in its consideration and determination of said rates on edible livestock in the western district, including the southwestern region, said Commission expressly excluded from the scope of the proceeding rates on horses and mules. The horse and mule industry in the Southwest is not and at the time of the presentation and overruling of said petition for reconsideration and modification was not subject to such unfavorable economic conditions as the edible livestock industry, but was and is in such condition as that the usual transportation standards should be applied. The horse and mule traffic in the Southwest has at all times moved freely on the rates prescribed and authorized by the Commission in its orders of November 10, 1924, and July 30, 1925, and on relatively higher combination rates in the case of

much of the interterritorial shipments from the Southwest, and none of the considerations relied upon by the Commission to sustain the low level of rates prescribed to apply on edible livestock has any force or application with respect to horses and mules in the Southwest, and the Commission's findings and order requiring that such rates be reduced is unjust, unreasonable, arbitrary, capricious, and contrary to the evidence.

—8—

The class rates which the Commission has prescribed to apply in the various portions of the western district lying east of the Rocky Mountains, as well as the various commodity rates that generally have been prescribed and which generally prevail therein are not upon a uniform level, but on the contrary are on a substantially higher plane in the western than in the eastern portion of that area, and, likewise, the level of rates that are prescribed or which prevail in the southern portion thereof, particularly in the States of Arkansas, Louisiana, Oklahoma, and Texas, is normally higher than that which prevails and which has been prescribed or authorized in the northern portion, commonly known as the western trunk-line territory, all of which is particularly applicable to the rates on horses and mules.

Contrary to such customary practice and usage, however, the Commission prescribed in its report in said

Livestock-Western District Rates a uniform level of rates to apply on edible livestock throughout the entire area mentioned above east of the Rocky Mountains, thereby disregarding the differences in transportation conditions which on other classes of traffic have warranted and brought about disparate and unrelated rate levels in various portions of that area. On pages 66 and 67 of its report in *Livestock-Western District Rates* the Commission has set forth the reasons by which it was influenced to depart in the case of edible livestock from the aforesaid customary practice of maintaining varying rate levels in that portion of the western district, and at the conclusion thereof significantly stated that it follows that uniform rate territories appropriate for livestock (meaning edible livestock) in the western district might not be appropriate for any other commodity.

Accordingly, in undertaking to compel your petitioners to reduce their present rates on horses and mules in southwestern territory to the same level of rates that are contemporaneously prescribed as reasonable maxima for observance thereon in western trunk-line territory, on the north, but without any evidence or finding that the horse and mule traffic and industry are subject to the same economic conditions and influences that bear upon the edible livestock traffic and industry, and without any evidence or finding of a similarity or iden-

tity of the transportation conditions in southwestern territory to or with those prevailing in western trunk-line territory, the findings and order so made by the Commission are unjust, unreasonable, arbitrary, capricious, and contrary to the evidence.

—9—

On page 440 of its report on further hearing in these proceedings (Exhibit A) the Commission comments upon numerous exhibits introduced by the carriers to establish their claim that the rates on horses and mules in the Southwest and in western trunk-line territory are unreasonably low, and on page 454 of said report reproduces as Appendix D thereto an exhibit which compares the rates and revenues per car, per gross ton-mile, and per gross car-mile on horses and mules proposed by the carriers as reasonable for future application, namely, the class A rates prescribed by the Commission for observance in the Southwest, or 45 per cent of first class, with the corresponding rates and earnings yielded by thirty-seven different commodities for the distance of 507 miles between Fort Worth and Kansas City.

The Commission, however, arbitrarily, capriciously, and without reason or logic, rejected and refused to take into consideration the showing and proof so made by the carriers, saying that the criticism of said ex-

hibit, as well as of practically all of the exhibits submitted by the carriers bearing on the contention that the rates on horses and mules are too low, is that the comparisons are with commodities that have few transportation characteristics in common with horses and mules.

—10—

Elsewhere in the same report, to wit, on pages 445-46, the Commission finds and declares that various unusual expenses are incurred in the transportation of livestock; that among these are the costs of construction and maintenance of loading and unloading enclosures and runways; that special tracks have to be constructed to these yards, and facilities afforded for feeding, watering and resting livestock under the requirements of the federal 28-hour law; that additional expenses are incurred in unloading and reloading at such livestock yards, and to comply with the state and federal quarantine regulations; that yards must be maintained for cleaning stock cars, and for removing old bedding and rebedding cars; that in addition free transportation is afforded to caretakers, and additional risks and liabilities incurred in their transportation; that animals are moved under expedited service, and in the course of transportation they require constant attention and must be carefully handled to prevent injury; and

that the excess percentage of empty to loaded car movement in the case of livestock over ordinary box car traffic increases greatly the operating costs.

Where evidence of record clearly discloses that even the rates proposed by the carriers to apply on horses and mules for the future (which the Commission states in its report would result in very materially increasing the present rates prescribed by it to apply thereon) are actually less and yield less revenue per car and per gross car-mile than is derived by the carriers from rates prescribed by the Commission to apply on commodities which involve far lower transportation costs,the failure and refusal of the Commission, in the exercise of its trained judgment as a body of experts designated by law to act and informed by experience in such matters, to give weight and credence to such comparisons is arbitrary, unsound, unreasonable, illogical, and capricious.

—11—

Moreover, the Commission incorrectly states that the rate comparisons so made by the carriers are with commodities that have few transportation characteristics with horses and mules. Among the thirty-seven compared commodities listed in Appendix D to the Commission's report as aforesaid will be found the item of live poultry. The transportation conditions incident to

the handling of live poultry are quite similar to, if not almost identical with, those under which horses and mules, as well as other classes of livestock are handled. Yet it will be noted from said Appendix D that for the distance of 507 miles between Kansas City and Fort Worth the Commission has prescribed a rate on live poultry of 114 cents per 100 pounds as compared with the class A rate proposed by the carriers to apply on horses and mules of 79 cents per 100 pounds, and as compared with the present rate prescribed by the Commission in 1924 to apply in the Southwest for that distance of 57.5 cents per 100 pounds.

The prescribed rate of 114 cents on live poultry yields a revenue per car of $205.20, with a revenue per gross ton-mile of 8.2 mills and per gross car-mile of 20.2 cents, as contrasted with a revenue per car of only $181.70 on the 79-cent rate proposed by the carriers as maximum on horses and mules, with a revenue per gross ton-mile of 8.8 mills and per gross car-mile of 19.5 cents. These comparisons of rates and revenues on a commodity which has almost identical transportation conditions to those incident to horses and mules are mentioned nowhere by the Commission in its said report on further hearing (except as listed in Appendix D thereto), but were arbitrarily, capriciously, and without lawful warrant ignored and accorded no weight by

the Commission in arriving at its findings and order on further hearing in said cases.

Bearing in mind the substantial identity of transportation conditions incident to the handling of live poultry and to the handling of livestock generally, the fact that in its findings and report in *Livestock-Western District Rates* the Commission prescribed a rate of only 43 cents per 100 pounds to apply on beef cattle for a haul of 507 miles as contrasted with the aforesaid rate of 114 cents per 100 pounds on shipments of live poultry for that distance, which itself was prescribed by the Commission, demonstrates most conclusively that the rates prescribed to apply on beef cattle and other classes of edible livestock were made with little or no regard for the onerous and expensive transportation costs incident to handling such traffic, and hence in the absence of any finding or evidence that horses and mules are subject to the same economic conditions which served to hold down and depress the rates on edible livestock, the Commission's findings and order whereby it undertakes to reduce the present rates on horses and mules in the Southwest are unjust, unreasonable, arbitrary, and capricious. Thus, for the distance of 507 miles mentioned above, the present rate of 57.5 cents per 100 pounds on horses and mules would become 49.5 cents under the order of the Commission herein assailed.

On page 445 of its report on further hearing (Exhibit A) the Commission stated in part that the evidence dealing with the propriety of maintaining a higher rate level in Texas differential territory and New Mexico than in the remainder of the Southwest is comprehensive and detailed, but that much of such evidence is the same as or similar to that introduced and considered in *Livestock-Western District Rates*, and that upon an exhaustive record in that proceeding uniform scales of rates on cattle and other edible livestock were prescribed to apply within the western district of the United States lying east of the Rocky Mountains. The Commission thereupon announced the conclusion that the scale of rates prescribed in said report on further hearing to apply on horses and mules should apply uniformly throughout the territory covered by the consolidated cases.

While it is true that for the reasons assigned in the western district livestock case the Commission did not see fit to authorize a higher level of rates on edible livestock in Texas differential territory than in the remainder of the western district east of the Rocky Mountains, it is likewise true that in other proceedings involving the rate level in Texas differential territory, where due regard was had for the transportation stand-

ard, together with the generally lighter volume of traffic and the more difficult operating conditions that are encountered therein, the Commission has authorized the carriers to publish and maintain higher rates for the transportation service performed by them in said differential territory than were prescribed as reasonable and proper for observance generally throughout the Southwest, and its authorization of such higher rates in said differential territory was based upon substantially the same evidence as that presented by the carriers in the western district livestock cases and in the consolidated cases relating to the rates on horses and mules herein under review.

Where the Commission has prescribed rates for observance in Texas differential territory based upon the transportation standard rather than in the light of economic, commercial, or competitive conditions, as in the case of live poultry, previously referred to herein, it has authorized the carriers to maintain and observe materially higher rates for the transportation service performed by them within said Texas differential territoy and New Mexico than it has fixed as just and reasonable throughout the Southwest generally. In its report and order made and entered some nine years since in its Investigation and Suspension Docket No. 2389, the Commission did in fact find justified a higher level of rates on horses and mules in said differential territory

and New Mexico than the basic rates prescribed in 1924 as maxima on horses and mules in southwestern territory, but without any finding that there has since been any change in the relative conditions, and without any substantial evidence before it to support such action the Commission in its order in said consolidated proceedings of December 11, 1933 (Exhibit C), has arbitrarily and capriciously undertaken to set aside its prior findings and order in said Investigation and Suspension Docket No. 2389, and thereby deny to your petitioners the right and privilege to maintain and observe the higher rates on horses and mules in Texas differential territory and New Mexico that are justified by the transportation standard than the basic rates fixed as reasonable and proper for observance throughout the remainder of southwestern territory.

—13—

Except where the rates on particular commodities are held down to a subnormal and depressed level by reason of some economic, commercial, and/or competitive influence or influences, it is and has been the practice of the Commission to recognize that the more burdensome transportation conditions and lighter density of traffic that prevail in southwestern territory warrant and even necessitate a higher level of class and commodity rates than that of these prescribed as rea-

sonable maxima in what is known as central freight association and eastern trunk-line territories, which roughly embrace that portion of the United States (except the New England States) lying east of the Mississippi River and north of the Ohio and Potomac Rivers.

In the case of horse and mule traffic, the Commission has recently prescribed the fourth-class rates (50 per cent of first class) as reasonable maxima for the transportation of such traffic in said central and eastern trunk-line territories, which fourth-class rates are slightly in excess of the basic interstate rates on horses and mules now prevailing throughout the Southwest, being those prescribed by the Commission in said consolidated cases in 1924, yet the Commission is now undertaking in utter and total disregard of the transportation standard to compel your petitioners to publish and maintain a substantially lower basis of rates within the Southwest, including Texas differential territory and New Mexico, than the rates which have been authorized and prescribed by it as just and reasonable on that traffic in said central and eastern trunk-line territories, and your petitioners allege and aver that in doing so said Commission has acted arbitrarily, wrongfully, capriciously, unlawfully, and contrary to the evidence before it.

In its report in certain consolidated complaints entitled *Eastern Livestock Cases of 1926*, decided July 14, 1928, the Commission prescribed a scale of maximum reasonable rates to apply in part on shipments of edible livestock from points in central territory to points in eastern trunk-line territory, which rates, though not bearing any definite percentage relation to the first-class rates prevailing between the same points of origin and destination, are or average somewhat less than 35 per cent of first class, whereas, as alleged above, the Commission has recently fixed as reasonable and proper for observance on shipments of horses and mules between the same points the fourth-class rates, or 50 per cent of first class.

In so doing, the Commission has not seen fit to place the rates on horses and mules in central and eastern trunk-line territories upon any definite percentage relation to the rates on edible livestock, but on the contrary has permitted the carriers in those rate groups to maintain rates on horses and mules which are more than 40 per cent in excess of the rates fixed by the Commission as reasonable maxima on shipments of beef cattle. Yet without regard to the differences in transportation conditions between these two classes of livestock and in total disregard of the fact that they are not related, the Commission has arbitrarily, capriciously, unreasonably

and unlawfully ordered and directed your petitioners to reduce their present rates on horses and mules in the Southwest to a level that is only 15 per cent in excess of the rates prescribed to apply on beef cattle in that territory.

—15—

On page 425 of its report on further hearing (Exhibit A) the Commission made the finding that "only the better grades of horses find their way to the stock markets." This finding not only is unsupported by the record, at least so far as horses and mules produced and sold in the Southwest are concerned, but on the other hand is refuted by affirmative evidence of record to the contrary, all as brought to the attention of the Commission in the petition for reconsideration and modification filed by the southwestern carriers but summarily denied by order dated December 11, 1933 (Exhibit B).

—16—

By Act of June 16, 1933 (§ 205 of the Emergency Railroad Transportation Act, 1933), the Congress amended paragraph (2) of § 15a of the Act (United States Code, Title 49, § 15a) so that same now provides that in the exercise of its power to prescribe just and reasonable rates the Commission shall give due

consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service. In its report on further hearing in said consolidated cases, which was handed down more than a month after the effective date of the aforesaid enactment, the Commission has disregarded in each and every particular the admonitions therein given by the Congress as its guide in the making of rates. The present rates on horses and mules in the Southwest have not served and are not serving to hamper or restrict in the least the free movement thereof; there is no need in the public interest of any reduction of the present rates on horses and mules, and any reduction thereof will not serve to promote adequate and efficient railway transportation, but on the contrary will tend to weaken the ability of your petitioners to render adequate and efficient railway transportation service under honest, economical, and efficient management.

With further regard to the foregoing, while the net railway operating income of class I railways in the entire United States during the year 1933 was considerably greater than for the year 1932, the net railway operat-

ing income of the class I carriers in the so-called southwestern region (including the most of your petitioners) was, on the contrary, less in 1933 than in 1932. The fact is that, of all the standard railroad rate groups recognized by the Commission, only the New England and the southwestern regions failed to register an increased net railway operating income in 1933 over that of 1932.

—17—

Accompanying its report and order in cause No. 12358 of November 10. 1924, the Commission issued its Fourth Section Order No. 9059 as aforesaid, (later supplemented by its Fourth Section Order No. 9711), whereby the defendant carriers were authorized to establish over all routes within the scope of the proceeding the lowest rates prescribed or approved in its said report as maxima over any route between the said points and to maintain higher rates from, to, and between intermediate points; and accompanying its order in its Investigation and Suspension Docket No. 2389 the Commission issued its Fourth Section Order No. 9183 with a similar authorization relating to the higher rates which the carriers were thereby given permission to maintain on horses and mules in Texas differential territory and New Mexico. But notwithstanding the fact that the rates so prescribed and authorized in such proceedings, being those currently effective in south-

western territory, are substantially more remunerative than those which your petitioners are required to publish in pursuance of the Commission's report on further hearing (Exhibit A) and its subsequent order of December 11, 1933 (Exhibit C), the Commission has arbitrarily, capriciously, and unlawfully undertaken by its Fourth Section Order No. 11340 (Exhibit F) to vacate and withdraw the permission previously accorded to petitioners to depart from the requirements of § 4 of the Act (Title 49, § 4, United States Code, 192[illegible] by its aforesaid Fourth Section Orders Nos. 9059, 9182 and 9711.

Since the issues raised by the allegations in the consolidated proceedings herein under review do not include generally the carload rates on horses and mules between all points in southwestern territory, but such cases are restricted in their allegations to shipments to and from (or to or from) the specific market points of Fort Worth, Texas, Wichita, Kansas, and Kansas City, Missouri, and also in part to and from Oklahoma City, Okla., and St. Joseph and St. Louis, Missouri, it is not within the power of the Commission to enter an order in such consolidated proceedings which would compel or coerce the carriers defendant or respondent therein to reduce their carload rates on horses and mules throughout the Southwest generally to not exceeding 115 per cent of the beef cattle rates prescribed by it in

the western district livestock case. Recognizing the existence of such limitation upon its power and jurisdiction in such consolidated proceedings, your petitioners aver that the Commission has undertaken and endeavored by misuse of the power conferred upon it under § 4 of the Act to do what it did not have the power and authority in such proceedings to do in pursuance of § 1 and/or the other sections thereof.

In prescribing the mileage scale of rates fixed as reasonable and proper in the report rendered by the Commission in said consolidated proceedings in 1924, the Commission stated that in computing distances the shortest possible routes by existing connections for the interchange of carload traffic should be used, but that such routes need not embrace more than the lines or parts of lines of three carriers, whereas the formula for computing distances adopted by the Commission for observance in applying the rates on edible livestock prescribed by it for observance in the Southwest in *Livestock-Western District Rates* requires that the rate-making distances be determined by use of the shortest possible mileage by which carload traffic can be moved, irrespective of the number of lines or parts of lines that may be employed in doing so, and as a consequence its order requiring that the rates on horses and mules shall not exceed 115 per cent of the beef cattle rates so prescribed, if permitted to become effective, would be

to require that the rates on horses and mules shall be computed by the same rate-making formula that was employed in connection with the beef cattle rates.

By paragraph (4) of § 15 of the Act the Commission in establishing through routes is prohibited from requiring any carrier by railroad without its consent (with exceptions here immaterial) to embrace in such routes substantially less than the entire length of its railroad or of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through routes, and in consequence thereof many instances occur where the short-line distances under the aforesaid rate-making formula do not conform to the requirements of the aforesaid paragraph (4) of § 15, so that it is not within the lawful power of the Commission to compel the defendant and respondent carriers, including your petitioners, to apply the rates prescribed by it via such short-line rate-making distances. In directing the application of the rates prescribed in *Livestock—Western District Rates*, the Commission expressly provided that the carriers should be required, inter alia, to maintain same only over routes by which they would not be short-hauled.

The application of the rates prescribed in *Livestock—Western District Rates* differs from that required by the

Commission in its more onerous order of December 11, 1933 (Exhibit C), herein assailed, which directs the defendant and respondent carriers, "according as they participate in the transportation," to maintain and apply to the interstate transportation of horses and mules in carloads in the territories within the scope of the consolidated proceedings rates which shall not exceed 115 per cent of the rates on fat or beef cattle from and to the same points that were prescribed by it in *Livestock —Western District Rates*, and in its report on further hearing (Exhibit A) the Commission states that fourth section relief "may be necessary" in order that rates in conformity with the findings therein made may be established.

Inasmuch as the Commission accompanied its orders entered in 1924 and 1925 in the proceedings herein under review with appropriate orders affording the necessary relief from the limitations of the fourth section to enable the carriers to comply with such orders directing or authorizing the establishment of the prescribed rates, the Commission manfestly recognized that fourth-section relief was essential in respect of the rates so prescribed or authorized. Accordingly, since the Commission by its aforesaid order of December 11, 1933 (Exhibit C), directed and required your petitioners to establish and maintain the lower basis of rates prescribed in its report on further hearing (Ex-

hibit A) between the same points as to which the previously prescribed rates now apply, and over existing routes, the Commission should have known and realized that departures from the requirements of the fourth section are inherent in the rates which it has ordered your petitioners to make effective on or before March 8, 1934, substantially similar to those which it realized were existent in the rates prescribed in its prior orders of 1924 and 1925.

Also, since its said order of December 11, 1933, requires your petitioners to establish and maintain rates on horses and mules which shall not exceed by more than 15 per cent the corresponding rates heretofore prescribed by it to apply on beef cattle in *Livestock—Western District Rates*, as to which an order granting relief from the limitations of the fourth section has been entered, it should have been obvious to the Commission that fourth-section relief would be necessary in order to make effective the rates on horses and mules bearing a definite percentage relation thereto.

Because of the failure of the Commission to provide at the time it made its aforesaid order of December 11, 1933 (Exhibit C), the necessary relief from the provisions of § 4 to enable them to publish and apply the prescribed rates as required in said order, "according as they participate in the transportation," and because they had no assurance that upon the filing of this action the Com-

mission would postpone the effective date of its said order of December 11, 1933, or that in the alternative this court would enter either a temporary or permanent order restraining the operation of said order of the Commission, the southwestern carriers, through their duly authorized agent, prior to the institution of this suit filed with the Commission through abundance of precaution an application for appropriate relief from the limitations of § 4, inasmuch as your petitioners, absent the fourth-section relief so applied for, would have found it impossible to publish rates in compliance with said order of the Commission without at the same time subjecting themselves to possible liability for failure to meet the requirements of § 4. Pursuant to such application of the southwestern carriers, on February 3, 1934, the Commission entered its Fourth Section Order No. 11485, whereby, pending the effective date of a further order to be entered in response to the aforesaid application, your petitioners were granted temporary relief from the requirements of § 4 so as to enable them to publish the rates prescribed in its aforesaid order of December 11, 1934.

When it assumes to take over from the carriers the power to initiate and make rates, the Commission rests under the duty and obligation in doing so to prescribe rates which conform to and are not in contravention of the provisions of any section of the Act, including those

of § 4, and in stating that fourth-section relief "may be necessary" in order that rates in conformity with the findings made by it may be established the Commission confesses it has failed to give consideration to the requirements of § 4 in prescribing the rates which it has ordered and directed your petitioners to publish and maintain in the territory within the scope of the issues raised in said consolidated proceedings.

V. Prayer for Relief

By the terms of its Fourth Section Order No. 11340, the Commission has undertaken, effective first on February 5, 1934, but later postponed so as to become effective on March 8, 1934, as aforesaid, to vacate and withdraw the relief from the requirements of § 4 of the Act provided by its Fourth Section Orders Nos. 9059, 9183 and 9711, and the order of the Commission in said consolidated proceedings of December 11, 1933, provides that it shall take effect on the 8th day of March, 1934, by the publication of tariffs giving force and effect to such order not less than thirty days prior to the effective date thereof, and unless such orders, and each of them, be suspended, set aside, or annulled by an order of this Court, they will work irreparable damage to your petitioners;—

WHEREFORE, your petitioners pray that upon the filing and presentation of this petition a temporary or interlocutory injunction suspending, restraining, and enjoining, but only in so far as they relate to causes Nos. 11018, 12358, 13001, 13619 and 13627, and to Investigation and Suspension Docket Nos. 1483 and 2389, the operation of said Fourth Section Order No. 11340 of the Interstate Commerce Commission of date July 24, 1933, and of its aforesaid further order of December 11, 1933, respectively, pursuant to the provisions of § 47 of Title 28, United States Code, 1926, be granted by the Court, after notice of three days to the Interstate Commerce Commission and the Attorney General of the United States, because of irreparable injury and damage which will result to your petitioners unless such suspension be made or unless such temporary or interlocutory injunction be granted, and that the Commission be restrained to the foregoing extent from taking any steps or instituting any proceedings to enforce the aforesaid fourth section order of July 24, 1933, and the aforesaid further order of December 11, 1933, respectively, pending a hearing on this petition; that upon hearing of this cause, and after notice of five days to the Interstate Commerce Commission and the Attorney General of the United States, a final decree be entered setting aside and annulling the aforesaid orders of the Commission, and each of them, in so far as they relate to causes Nos. 11018,

12358, 13001, 13619 and 13627, and to Investigation and Suspension Docket Nos. 1483 and 2389, as aforesaid, and perpetually enjoining and restraining to that extent the enforcement of said orders, and each of them, and that your petitioners may be granted such other and further relief as to a court of equity may seem meet and proper in the premises.

Respectfully submitted,

J. H. TALLICHET,
Esperson Bldg., Houston, Texas.,
G. H. MUCKLEY,
Transportation Bldg., Washington, D. C.
H. H. LARIMORE,
CHAS. M. SPENCE,
GEO. W. HOLMES,
Missouri Pacific Bldg., St. Louis, Mo.,
A. B. ENOCH,
WALLACE T. HUGHES,
La Salle Street Station, Chicago, Ill.,
T. D. GRESHAM,
R. S. SHAPARD,
SAMUEL W. LANCASTER,
ROBERT WILKINS THOMPSON,
Texas & Pacific Bldg., Dallas, Texas,
Solicitors for Petitioners.

HACKNEY & WELCH,
Federal Reserve Bldg.,
Kansas City, Mo.,
Resident Solicitors.

The State of Texas }
County of Dallas } SS

J. B. Payne, being first duly sworn upon his oath, deposes and says that he is Vice-President—Traffic of The Texas and Pacific Railway Company, one of the petitioners in the above-entitled cause; that he has read the petition herein and knows the contents thereof; that the matters therein alleged are true to the best of his knowledge and belief; and that he is authorized to make this affidavit on behalf of the petitioners.

J. B. Payne

Subscribed and sworn to before me this ninth day March, 1934.

Addie Bassett,

(SEAL) Notary Public, Dallas County, Texas.

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INTERSTATE COMMERCE COMMISSION

WESTERN HORSE AND MULE RATES

No. 12358[1]

TEXAS LIVESTOCK SHIPPERS PROTECTIVE LEAGUE ET AL. v. DIRECTOR GENERAL, AS AGENT, ABILENE & SOUTHERN RAILWAY COMPANY, ET AL.

Submitted August 1, 1932. Decided July 24, 1933

Scale of rates prescribed for application on horses, mules, burros, and asses, in carloads, to, from, and between points in southwestern and western trunk-line territories. Former reports in *Horse and Mule Rates in the Southwest, 1924*, 93 I.C.C. 479, *Rates on Horses and Mules in the Southwest*, 102 I.C.C. 87, *Nebraska Livestock Case*, 89 I.C.C. 444, and *South Dakota R.R. Commissioners* v. *C. & N. W. Ry. Co.*, 77 I.C.C. 451, modified.

B. D. Pelton, *A. E. Bazan*, *A. M. Corp*, *T. J. Slattery*, and *J. H. Tedrow* for complainants.

W. H. Fitzpatrick, *T. Y. Horton*, *W. M. Dyer*, *J. H. Mercer*, *A. M. Corp*, and *M. C. Lysle* for interveners.

A. A. Brown for Kansas Public Service Commission. *Herman L. Bode*, assistant attorney general, *Raymond L. Dillman*, assistant attorney general, *S. W. W. Carr*, and *D. L. Kelley* for Board of Railroad Commissioners of South Dakota. *C. A. Ross* for Nebraska State Railway Commission.

A. B. Enoch, *C. S. Burg*, *M. G. Roberts*, *Robt. Thompson*, *H. H. Larimore*, *J. H. Barwise, Jr.*, *R. S. Outlaw*, *H. C. Barron*, *E. A. Boyd*, *C. M. Spence*, *G. E. Duffy*, *J. L. Stewart*, *Dodson & Smith*, *Thos. F. King*, *M. M. Joyce*, *R. G. Hagman*, *J. M. Souby*, *J. N. Davis*, *Walter McFarland*, *Henry Christianson*, *P. F. Gault*, *Del W. Harrington*, *M. J. Dowdin*, *S. C. Inkley*, *Fred L. Wallace*, *F. A. Swenson*, *O. H. Timm*, and *John Q. Dier* for defendants.

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[1] This report embraces also No. 11018, Wichita Board of Commerce et al. v. Director General, as Agent, Alexandria & Western Railway Company, et al.; No. 13001, Chamber of Commerce of Kansas City, Mo. v. Alexandria & Western Railway Company, et al.; No. 13619, Ross Brothers Horse & Mule Company et al. v. Union Pacific Railway Company et al.; No. 13627, Burnett-Yount Horse & Mule Company et al. v. Abilene & Southern Railway Company et al.; Investigation and Suspension Docket No. 2389, Rates on Horses and Mules to, from, or between Southwestern Points; Investigation and Suspension Docket No. 1483, Horses and Mules from Kansas City, Mo. and Wichita, Kans., to New Orleans, La., Memphis, Tenn., and Other Points; No. 13273, Nebraska Live Stock Case; No. 12268, Board of Railroad Commissioners of State of South Dakota v. Chicago & North Western Railway Company et al.; and Fourth Section Applications Nos. 461, 462, 621, 673, and 678.

REPORT OF THE COMMISSION ON FURTHER HEARING

BY THE COMMISSION:

The complaint in no. 12358, filed in 1921 by the Texas Live Stock Shippers Protective League of Fort Worth, Tex., and other Texas interests alleged, in part, that the rates on horses, mules, burros, and asses, between Texas points and other points in southwestern and western territories, were unreasonable, unduly prejudicial, and in violation of the fourth section; more particularly, that the rates to and from Fort Worth were unreasonable and unduly prejudicial, as compared with those to and from other primary markets, such as Kansas City and St. Louis, Mo., and Wichita, Kans. Dockets nos. 13619 and 13627, involving similar allegations, were set for hearing with no. 12358, and at the same time No. 11018, *Wichita Board of Commerce* v. *Director General*, 60 I.C.C. 536, Investigation and Suspension Docket No. 1483, *Horses and Mules from Kansas City, Mo.*, 69 I.C.C. 97, and No. 13001, *Kansas City Chamber of Commerce* v. *A. & W. Ry. Co.*, 89 I.C.C. 22, were reopened for further consideration, and consolidated with no. 12358. There were also assigned for hearing in connection therewith portions of fourth-section applications nos. 461, 462, 621, 673, and 678.

In *Horse and Mule Rates in the Southwest, 1924*, 93 I.C.C. 479, we prescribed a scale of rates on horses and mules (which will be understood to include burros and asses), for application between Fort Worth and points in Kansas, Oklahoma, Arkansas, Texas common-point territory, that part of Missouri south of the Missouri River, that part of Louisiana west of the Mississippi River, and that part of Colorado on and south of the lines of the Chicago, Rock Island & Pacific Railway Company and the Union Pacific Railroad Company and east of the main line of the Colorado & Southern Railway Company extending south from Denver, Colo., through Pueblo and Trinidad, Colo., and that part of New Mexico on and east of the Colorado & Southern. Except as indicated in the report, fourth-section relief was denied. The carriers affected were authorized to publish these rates, which we will call the southwestern horse and mule scale, by all routes (subject to certain fourth-section restrictions) between the markets of Fort Worth, Wichita, Kansas City, St. Joseph, Mo., St. Louis, and Oklahoma City, Okla., on the one hand and the territory above described on the other. We also found the existing rates unduly prejudicial to Fort Worth and unduly preferential of Wichita, Kansas City, St. Joseph, St. Louis, and Oklahoma City, and required the maintenance between Fort Worth and all the territory embraced in the findings of rates not in excess, distance considered, of the rates contemporaneously maintained between the same stations and the points found to be unduly preferred.

On March 16, 1925, upon joint petition of the Public Service Commission of Kansas and the Chamber of Commerce of Kansas City, we reopened *Horse and Mule Rates in the Southwest, 1924, supra*, with respect to the interstate rates from or to points in Kansas, Colorado, and southern Missouri to or from Wichita, Kansas City, St. Joseph, and St. Louis. Except as between these points, the southwestern horse and mule scale became effective May 20, 1925. Further hearing with respect to the excepted rates was held jointly with the Kansas Public Service Commission, which had before it an application of the carriers for permission to make the southwestern horse and mule scale applicable also to Kansas intrastate traffic, in May 1925.

Subsequently in *Rates on Horses and Mules in the Southwest*, 102 I.C.C. 87, we directed that the rates between the markets in the Southwest and Texas differential territory [2] and New Mexico should be constructed by adding differentials to the southwestern horse and mule scale. Upon further consideration we issued an order on January 4, 1926, wherein we reopened these proceedings for further hearings with respect to the reasonableness, lawfulness, and propriety of the rates, and minimum weights in conpection therewith, assailed in the various dockets consolidated with no. 12358. On the same date *Nebraska Livestock Case*, 89 I.C.C. 444, and *South Dakota R.R. Commissioners* v. *C. & N. W. Ry. Co.*, 77 I.C.C. 451, hereinafter called the *South Dakota case*, were reopened and assigned for further hearings with no. 12358, but only with respect to the rates on horses and mules.

Nebraska Livestock Case, supra, was a cooperative proceeding with the Nebraska State Railway Commission, instituted on our own motion, to determine whether the proper relation existed between the interstate and intrastate rates on ordinary livestock, including horses and mules, from all Nebraska points to Omaha and South Omaha, Nebr., on the one hand, and the interstate rates from the same points of origin to St. Joseph and Kansas City, Mo., and Sioux City, Iowa, on the other. We found that the rates from Nebraska points to the Missouri River cities, Kansas City to Sioux City inclusive, were unduly prejudicial to interstate shippers and to St. Joseph, Kansas City, and Sioux City, and unreasonably preferential of intrastate shippers and of Omaha and South Omaha, and unjustly discriminatory against interstate commerce. We also found instances of unreasonable preference of interstate shippers and localities, undue prejudice to intrastate shippers and localities, and unjust discrimination against intrastate commerce. No order was issued but the Nebraska

[2] Texas differential territory is now defined in *Consolidated Southwestern Cases*, 139 I.C.C. 535, and 144 I.C.C. 630.

commission announced its conclusions simultaneously with ours, and certain scales were suggested, the scale on horses and mules, and on hogs and calves in single-deck cars, being 115 percent of the rates on cattle for like distances. From northern Nebraska higher scales were suggested than from southern Nebraska. These rates were not suggested as reasonable maxima.

In the *South Dakota case*, upon a finding of unreasonableness and undue prejudice, we prescribed certain scales of rates on livestock, including horses and mules, from South Dakota points to points in Minnesota, Wisconsin, Illinois, Iowa, Missouri, and Nebraska. From points west of the Missouri River, differentials approximately 125 percent of the base rates applying east of the river were prescribed. On horses and mules, and on hogs and calves in single-deck cars, rates 115 percent of the rates on cattle for like distances were prescribed.

By order of February 8, 1928, further hearings were restricted solely to rates for the future. Further hearing was held in October 1928, a proposed report issued, to which exceptions were filed, and oral argument was heard. By order of February 1, 1932, these proceedings were reopened for further hearing in all respects, and further hearing was held in May 1932.

Except as noted, rates will be stated in amounts per 100 pounds and will be those on ordinary horses, as distinguished from horses, mules, burros, and asses, chiefly valuable for breeding, racing, and show purposes. Where stated in amounts per car the charges will be for a standard car, 36 feet 6 inches in length. No emergency charges were authorized in 1931 on horses and mules.

RATES AND TERRITORY COVERED

The rates in issue in these consolidated proceedings are the interstate rates on horses and mules between points in the southwestern States of Texas, Oklahoma, Arkansas, eastern New Mexico, and Louisiana west of the Mississippi River;[1] the western trunk-line States of Kansas, Nebraska,[2] South Dakota,[3] Colorado east of the Colorado common points, and Missouri south of the Missouri River.

Excepting the complaint in the *South Dakota case*, none of the complaints bring in issue the rates to the territory east of the Mississippi River other than to the river crossings at East St. Louis, Ill., Memphis, Tenn., and New Orleans, La. In the *South Dakota case*, the rates from South Dakota origins to destinations in Minnesota,

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[1] The territory within which the southwestern horse and mule scale was originally intended to apply is defined in the appendix to the report in 93 I.C.C. 479, 498.

[2] The rates within and from Nebraska are in issue only to the extent indicated in *Nebraska Livestock Case*.

[3] Only to the extent assailed in the *South Dakota Case*.

Wisconsin, and Illinois were assailed, together with the rates to Iowa, Missouri, and Nebraska. Although rates from Texas to northern Missouri, Iowa, and Illinois are assailed in no. 13627, the evidence submitted on behalf of the complainants therein was confined to rates to the territory south of the Missouri River.

Within the area above outlined no less than six different rate bases apply. These bases are as follows: The southwestern horse and mule scale with differentials prescribed in Texas and New Mexico, the Kansas-Missouri rates, the Colorado-Kansas rates, the northern and southern Nebraska scales, the South Dakota scale with differentials west of the Missouri River; and the northern and southern Missouri scales prescribed in *Dimmitt-Caudle-Smith Livestock Commission Co.* v. *R. R. Co.*, 47 I.C.C. 287.

The present rates on horses and mules to the markets of St. Louis, Kansas City, St. Joseph, and Wichita have been established mainly with relation to the contemporaneous cattle rates. Those from Missouri to East St. Louis and National Stock Yards, Ill., are substantially on the basis prescribed in the *Dimmitt-Caudle-Smith case*, *supra*, as affected by the general increases and reductions. In that case we prescribed rates on horses and mules and hogs in single-deck cars, on the basis of 120 percent of the beef cattle rates. From Missouri stations south of the main line of the Chicago, Rock Island & Pacific from St. Louis to Kansas City, rates were prescribed on the basis of 105 percent of the rates from points in Missouri north of that line for distances over 100 miles to and including 200 miles, and 10 percent over the northern Missouri rates for all distances over 200 miles. The scale did not extend beyond 350 miles. The relation of the interstate rates to East St. Louis and National Stock Yards, on the one hand, and the intrastate rates to St. Louis, on the other, was found to subject East St. Louis and National Stock Yards to undue prejudice and disadvantage in favor of St. Louis. Such undue prejudice was ordered removed. To Kansas City the present rates from Kansas points are on the basis of the statutory maximum rates which became effective May 29, 1909, as affected by the general increases of 1918 and 1920 and the reduction of 1922. To Wichita the rates from Kansas points are in general on the same level as to Kansas City, but in some instances are on the basis of the scale prescribed in *Nebraska Livestock Case*. From Kansas and Colorado origins the rates to Kansas City and St. Joseph are generally the same.

Rates under the southwestern horse and mule scale are substantially higher as a whole than rates under scales now in effect in Kansas, Missouri, and Nebraska, and from South Dakota points to markets on the Missouri and Mississippi Rivers. Appendix A is a

comparison of the rates for representative distances under the southwestern scale with the scale rates applicable in northern and southern Missouri prescribed in the *Dimmitt-Caudle-Smith case*, and with the scales prescribed in *Nebraska Livestock Case*, and in the *South Dakota case*. Other scales applicable intrastate in Nebraska and interstate between Colorado and Kansas are included.

With the exception of the last named, all of the scales shown are substantially below the level of the southwestern horse and mule scale.

In *Galesburg Horse & Mule Co.* v. *A., T. & S. F. Ry. Co.*, 144 I.C.C. 315, we found the rates on horses and mules from points in Oklahoma and Texas to Galesburg, Ill., unreasonable to the extent that they exceeded the southwestern horse and mule scale, and prescribed that scale for the future.

In *Galesburg Horse & Mule Co.* v. *Chicago & N. W. Ry. Co.*, 152 I.C.C. 165, we found the rates charged on horses and mules from points in South Dakota east of the Missouri River to Galesburg, which exceeded 115 percent of the standard cattle rates from the same points of origin to Galesburg, computed under the scale prescribed in the *South Dakota case*, unreasonable to the extent that they exceeded such scale. We said, however: "The South Dakota scale is now under review in Docket No. 17000, consequently no finding for the future will be made here."

In *Barnett Mule Co.* v. *Ahnapee & Western Ry. Co.*, 167 I.C.C. 75, the rates on horses and mules from points in Missouri, Kansas, Iowa, Nebraska, North Dakota, South Dakota, Minnesota, Montana, and Wyoming to East St. Louis and National Stock Yards, were attacked as unreasonable and unduly prejudicial to complainants and unduly preferential of dealers in horses and mules at Kansas City, St. Joseph, Omaha, and Galesburg. Very little evidence was introduced, complainants relying almost exclusively on former decisions dealing with the rates on livestock. The evidence showed that:

> From the origin territory here considered other than South Dakota complainants show that rates on horses and mules to the National Stock Yards from Nebraska range from 120 to 140 per cent of the cattle rates between the same points; from Iowa 125 to 151 per cent; from Kansas 116 to 153 per cent; from Missouri 119 to 149 per cent; and from Minnesota 115 to 128 per cent. No evidence respecting the unreasonableness of the rates from Wyoming, Montana, and North Dakota was introduced.

The complaint was dismissed without prejudice to the conclusions that might be reached in the instant proceedings.

FLOW OF TRAFFIC

Horses and mules are raised mostly on the farms of the West and Southwest. They are sold by the farmers to dealers who, after

assembling them at some interior point, ship them to the markets at East St. Louis, Kansas City, Fort Worth, Omaha, Wichita, St. Joseph, and Sioux City, where they are sold "on the block" for reshipment to the southern and eastern States for retail distribution.

From the Southwest the flow of traffic is mainly to the Southeast. From the western trunk-line States the traffic moves either to or through the Missouri River markets, dealers at these markets competing with one another for consignments for resale to dealers in Chicago, Ill., Galesburg, and cities in central territory. The movement from South Dakota is almost entirely to the East, there being no movement of any consequence to the Southeast. South Dakota shippers, therefore, claim that their rate structure should not be tied up with that of the Southwest. They are joined in this contention by shippers in western trunk-line States, who claim that the density of traffic and competitive conditions in that territory warrant a lower measure of rates therein than applies within the Southwest.

The receipts at the Kansas City stockyards for the year 1927 show that out of a total of 44,067 horses and mules received, 27,012 were from Kansas, 6,329 from Missouri, 2,794 from Nebraska, 2,397 from Colorado, 2,043 from Oklahoma, and 1,073 from New Mexico, and less than 500 from any other State. Only 488 were from Texas, 162 from South Dakota, 101 from Arkansas, and none from Louisiana. The receipts for 1931 show an increase from Colorado and Oklahoma but a decrease from practically all other points. Out of total receipts in 1931 of 33,218 horses and mules, 19,995 were from Kansas, 4,805 from Missouri, 929 from Nebraska, 3,380 from Colorado, 2,263 from Oklahoma, 128 from New Mexico, 539 from Wyoming, 411 from Texas, 83 from South Dakota, 22 from Arkansas, and none from Louisiana.

VOLUME OF MOVEMENT, PRODUCTION, AND VALUES

The movement of horses and mules is not more than 3 to 4 percent of the volume of the movement of edible livestock. The Chicago, Burlington & Quincy Railroad Company, which operates about 2,800 miles of railroad in Nebraska, a large livestock-producing State, is fairly illustrative of the volume of movement of the principal stock-carrying roads. In the year 1927 that road hauled 4,944 cars of horses and mules, as compared with 186,329 cars of edible livestock, i.e., cattle, calves, sheep, goats, and hogs, or slightly more than 2.6 percent of the movement of edible livestock. In 1931 it hauled 3,562 cars of horses and mules as compared with 136,498 cars of edible livestock. The ratio for 1931 was also 2.6 percent. The carloads of horses and mules handled in the United States in

1930 were 62,282, and the carloads of cattle, calves, sheep, goats, and hogs were 1,683,792, and the ratio 3.6 percent. The carloads of horses and mules handled by 20 western roads in 1927 were 21,779 and the carloads of cattle, calves, sheep, goats, and hogs were 688,999, and the ratio 3.1 percent.

The 1920 census shows that the 11 States lying between the Mississippi River and the Rocky Mountain States, including Louisiana, originate 34.8 percent of the total livestock produced in the United States. Of the total horse and mule production those States raise 49.4 percent, or one half; 34.2 percent originates in the 7 States north of the Oklahoma-Arkansas boundary lines, and 15.2 percent in the Southwestern States.

The receipts at 10 principal stock markets in the West and Middle West, Chicago, Denver, East St. Louis, Fort Worth, Kansas City, Omaha, St. Joseph, St. Paul, Minn., Sioux City, and Wichita, indicate a marked decline as compared with pre-war years. Taking 1913 as a representative year prior to the World War, the total receipts of horses and mules at the 10 western markets named were 488,000 head. Excluding the World War years, when these animals were in great demand for the allied armies, we find the receipts decreased from 325,000 in 1923, to 166,000 in 1931.

The use of horse and mule power on farms has decreased rapidly and steadily as there has been a growth of the use of trucks and tractors. For the United States as a whole there were 131,551 motor trucks and 229,332 tractors on farms in 1920. In 1930 there were 900,385 motor trucks, an increase of 584 percent, and 920,395 tractors, an increase of 301 percent. In the western group of States, Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, Kansas, Arkansas, Louisiana, Oklahoma, Texas, Wisconsin, and Illinois, the increase in the number of motor trucks 1930 over 1920 was 624 percent, and the increase in the number of tractors 264 percent.

Horses and mules load but slightly, if at all, in excess of the minimum weight of 23,000 pounds for the standard car of 36 feet 6 inches length, the average loading being variously stated as from 11.3 tons to 11.7 tons per car.

Values vary greatly, and depend upon the age, size, quality and breed of the animal. The values on the farm are much below those at the principal markets. This is doubtless due to the fact that the farm value covers the general run of horses and mules, while the value at the market grades according to the character and quality of the animals. Only the better grades find their way to the large stock markets. The Department of Agriculture year books show the number and value of horses and mules on farms as follows:

Average	Horses		Mules	
	Number	Average price per head	Number	Average price per head
1909–13	20,385,000	$106.34	4,267,000	$119.92
1914–20	21,047,000	102.38	4,795,000	130.62
1921–31	16,936,000	69.44	5,517,000	84.42

A marked decline in the farm prices of both horses and mules will be observed. The number of horses has decreased, but the number of mules has increased. In February 1932, the horses on farms were 63.9 percent of the number in 1910; and mules 120.7 percent. The values per head on farms in 1930 and 1931 and as shown in the Department of Agriculture year books and in Crops and Markets, February 1932, are as follows: Horses, 1930, $69.86; 1931, $60.43; 1932, $53.37; mules, 1930, $83.76; 1931, $69.17; 1932, $60.69. The average estimated values on farms in South Dakota are still lower.

The value per head of horses and mules as compared with cattle and calves for the year 1929 in the United States is shown as 123.6 percent in the Year Book of Agriculture, 1930. Assuming that about as many horses could be loaded safely in a standard car as beef cattle, the ratio of values per car would closely correspond to the ratio of values per head. The record does not afford a comprehensive comparison of values of carloads of horses and mules and of cattle.

The number of ordinary mature horses usually loaded in a car in the Northwest ranges from 20 to 25. On cattle weighing 900 pounds each the number required to make the minimum is 24, and 27 may be safely loaded; on cattle weighing 1,000 pounds each, 22 are required to make the minimum, and 26 may be safely loaded. In the Southeast estimated weights are used on horses and mules; the weight of each animal is estimated at 1,000 pounds.

When we come to consider the prices received at the stockyards we find a wide variance in the quoted values of the different grades of horses and mules. The highest grade is quoted at fully 10 times the price of the lowest grade, at some markets. The carriers contend that the values of the animals are greatly enhanced over the price shown on the farm by the transportation service they have received; and that therefore, these animals can take a higher basis of rates than are now in effect. However, we must bear in mind the fact that only the better grades of horses find their way to the stock markets.

LOSS AND DAMAGE

The percentage of claim payments to the revenue received on horses and mules is not only higher than on other livestock, but is higher than on any other class of traffic. The following table shows the percentage of loss and damage claim payments on the Chicago & North Western Railway for the year 1930, and on the Chicago, Burlington & Quincy and the Quincy, Omaha & Kansas City Railroad for the year ended June 30, 1931:

	C. & N. W.	C., B. & Q. and Q., O. & K. C.
	Percent	*Percent*
Products of agriculture	1.93	0.77
Horses and mules	8.47	9.66
Cattle and calves	1.45	1.13
Sheep and goats	1.94	1.43
Hogs	1.66	1.46
Animal products	.64	.75
Products of mines	.085	.15
Products of forests	.072	.15
Manufactures and miscellaneous	.61	.59
Total carload freight	.81	.60
Carload freight other than livestock	.72	.50

The following table shows the percentages of loss and damage claim payments to the revenue earned on horses and mules, as compared with livestock other than horses and mules, and as compared with all carload traffic except livestock for a considerable period of years:

Road	Period covered	Horses and mules	Livestock in carloads, other than horses and mules	All carload traffic except livestock
		Percent	*Percent*	*Percent*
Rock Island lines	1924-31	6.54	2.30	1.01
Southern Pacific (Pacific lines)	1920-31	3.72	1.90	.91
Texas & Pacific	1922-31	7.12	6.55	.72
St. Louis Southwestern of Texas	1924-29	6.96	7.68	.81
Santa Fe	1930-31	7.04	1.72	.60

As appears from *Pacific Coast Vegetable Growers & Shippers* v. *So. Pac. Co.*, 185 I.C.C. 689, the percentage of loss and damage claim payments to the revenue on lettuce and other fresh or green vegetables, in carloads, from California and Arizona to a number of western States and to that portion of the United States east of the Mississippi River and north of the Ohio River is less than here shown for horses and mules.

Ordinary livestock is excepted from the property as to which the Commission is empowered to authorize or require the establish-

ment of rates dependent upon declared or released value, by section 20 (11) of the Interstate Commerce Act.

HORSES FOR SLAUGHTER

A witness for the Chicago & North Western testified that in western trunk-line territory horses for slaughter are voluntarily carried on the cattle basis. By reference to *Cedarburg Fox Farms* v. *Ahnapee & W. Ry. Co.*, 178 I.C.C. 379, by division 3, however, it will be seen that horses for slaughter move on the rates for ordinary horses from points in North Dakota, South Dakota, and Montana, and such rates are there found not unreasonable. The division said: "The record does not warrant the prescribing of rates on complainant's traffic on as low a bases as that maintained on fat cattle." The division also found the maintenance of rates on horses for slaughter on the fat-cattle basis to Rockford, Ill., unduly prejudicial to complainant and unduly preferential of competitors at Rockford.

The history of the rates to Rockford is given in *Chappel Bros.* v. *Chicago, B. & Q. R. Co.*, 161 I.C.C. 677, wherein is also shown the history of similar rates on a lower basis, applying within the State of Montana. Rates were sought to Rockford upon the basis of 105 percent of the stock-cattle rates applying within Montana, but the complaint was dismissed. The rates to Rockford and those within Montana were established as emergency measures to assist in exterminating wild range horses, which had become a troublesome problem. The carriers, however, voluntarily extended the fat-cattle basis to apply on range horses and other horses, having value only for slaughter, from Wyoming to Butte, Mont., and from a portion of the original territory here considered to Topeka, Kans., Wichita and Albia, Iowa, as well as from various points on the North Western to so-called primary markets.

In *Strauss Packing Co.* v. *Alabama & V. Ry. Co.*, 155 I.C.C. 183, division 5 found that maximum reasonable rates on horses, valuable only for slaughter, from points in official territory and from Kansas City, Omaha, Sioux City, St. Paul, and points in western territory intermediate therefrom, to Bushwick station, Brooklyn, N.Y., for the future would not exceed fourth class.

POSITIONS OF THE RESPECTIVE PARTIES

Recent changes in the rate structure of the West and Southwest have changed the character of the proposals made by the parties. Briefly, the positions now taken are as follows:

The Texas complainants, which term includes complainants in nos. 12358, 13619, and 13627, insist (1) that conditions have so

improved in Texas differential territory that no justification now exists for differentials to be added to the southwestern horse and mule scale in constructing the rates to and from Texas differential territory; (2) that transportation and economic conditions in Texas are substantially similar to those obtaining in Kansas and between Kansas and southern Missouri, and that the same scale of rates should apply from Fort Worth and other Texas origins to the Missouri River markets and to St. Louis and East St. Louis as apply from Kansas origins to these markets; and (3) that the rate of progression of the southwestern horse and mule scale is too rapid and should be revised.

The chambers of commerce of Kansas City and St. Joseph jointly urge the adoption of two scales of rates, with a uniform rate of progression of 6 cents for every 100 miles, the first scale for application in the Southwest, the other and lower scale for application within and from western trunk-line territory, in particular between Kansas and southern Missouri. These interests argue that the limitations of the issues in these proceedings preclude a complete adjustment of the rates on horses and mules in the West, inasmuch as the rates to Omaha and Chicago from the Southwest and from western trunk-line territory are not in issue, nor, with the exception of the States of Kansas and Nebraska, are the intrastate rates brought in issue. They urge that, whatever basis is adopted, the rate of progression should be uniform (in which contention they are opposed by the Board of Railroad Commissioners of South Dakota and others), and that the rates within western trunk-line territory should be lower than in the Southwest; that in the absence of through rates to the East and Southeast, there should be a reasonable basis of proportional rates to apply from Kansas City and St. Joseph to the Mississippi River crossings at Memphis and St. Louis; and that the rates to and from Kansas City and St. Joseph should be grouped. Finally, they urge that such scale as may be adopted should be related to the cattle scale prescribed in *Livestock—Western District* Rates, 176 I.C.C. 1, 179 I.C.C. 104, 185 I.C.C. 457. In the suggestion that the rates on horses and mules should be made a certain percentage over the cattle rates, Kansas City and St. Joseph interests are joined by those representing Wichita, Fort Worth, and other shippers of livestock, and by the railroad commissions of Nebraska and South Dakota.

The Wichita Chamber of Commerce and associated complainants in Docket No. 11018 are interested primarily in the rates to the Southeast. Their main concern is with the relation between the proportional rates from Wichita and Kansas City, respectively, to Memphis. It is their contention that the Wichita-Memphis propor-

tional rate should bear the same relation to the Wichita-Memphis local rate as the Kansas City-Memphis proportional rate bears to the Kansas City-Memphis local rate. They submit a proposed scale constructed by taking 115 percent of the so-called 1716 cattle scale,[6] modified to date by the general increases and reductions, for distances under 450 miles; the director general, or amended Shreveport, scale [7] for distances from 450 miles to and including 950 miles; and the northwestern scale [8] for distances in excess thereof. They ask that any scale prescribed for application within the Southwest be made uniform from all markets to the Mississippi River crossings on traffic going into the Southeast.

The Nebraska State Railway Commission contends that Nebraska should not be divided into two or more rate territories as was done in *Nebraska Livestock Case*. It joins the Board of Railroad Commissioners of South Dakota in advocating rates made 110 percent of the present rates on fat cattle.

The Board of Railroad Commissioners of South Dakota contend that the rates from South Dakota should not be related to the rates from the Southwest to the Missouri River markets, inasmuch as their main competition is with Iowa, Illinois, and Minnesota, and that the rates from South Dakota should be made with relation to the rates in effect from those States. As the rates from those States are not in issue in this proceeding they contend that no proper adjustment can be made in the rates from South Dakota.

Defendants contend that the present rates are too low, particularly in western trunk-line territory. They propose column 45, or class A rates as prescribed in the southwestern revision and western trunk-line revision, minimum 23,000 pounds. They signify their intention of establishing throughout western trunk-line territory whatever level of rates is approved in that portion of western trunk-line territory here involved. Before the southwestern class-rate revision, as shown in the original report herein, 93 I.C.C. at page 482, the carriers proposed class B rates for the future, and it was not seriously questioned that class A rates were too high for future general application.

SOUTHWESTERN HORSE AND MULE SCALE

As previously noted, the Texas complainants contend that the rate of progression of the southwestern horse and mule scale, pre-

[6] Prescribed in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I.C.C. 160, 23 I.C.C. 656.

[7] The Shreveport scale was prescribed in *Shreveport-Texas Cattle, Lignite, Wood, and Tanbark*, 48 I.C.C. 283.

[8] Prescribed in *American National Live Stock Asso. v. O.-W. R.R. & N. Co.*, 109 I.C.C. 621.

scribed in no. 12358, 93 I.C.C. 479, *supra*, is too rapid. These complainants compare (see appendix B) the southwestern horse and mule scale with the Shreveport scale, and with rates published by the Missouri-Kansas-Texas for movement from Kansas into Missouri, for movements within Kansas, and for movements from northern and southern Missouri to St. Louis. The rate of progression for distances over 200 miles is more rapid under the southwestern horse and mule scale than under the other scales shown.

As indicative of the disadvantage under which the dealer at Fort Worth labors in making an in-and-out shipment, the following examples are given of the inbound charges on a standard car of 23,000 pounds weight from Emporia, Kans., to Kansas City, and from Great Bend, Kans., to Wichita, as compared with the charges from the same origins to Fort Worth, and the outbound rates from these three markets to Alexandria, La.:

	Inbound rate			Outbound rate to Alexandria			Through	
	Distance	Rate	Per car	Distance	Rate	Per car	Distance	Charge
	Miles	*Cents*		*Miles*	*Cents*		*Miles*	
From Emporia, Kans., to—								
Kansas City	112	.....	$53.90	683	66	$151.80	795	$205.70
Fort Worth	440	53.5	123.05	352	48	110.40	792	233.45
From Great Bend, Kans., to—								
Wichita, Kans	109	.....	53.35	661	65	159.50	770	212.85
Fort Worth	482	56	128.80	352	48	110.40	834	239.20

Kansas City has an advantage of $27.75 per car over Fort Worth on an in-and-out movement from Emporia to Alexandria, although the distances are the same, and Wichita has an advantage over Fort Worth of $26.35 per car on a similar shipment from Great Bend to Alexandria, although the difference in distance in favor of Wichita is but 54 miles.

In the following comparison the advantage of Kansas City and St. Louis over Fort Worth in the rates from Denver is indicated, the comparison also showing what the charges would be under the southwestern horse and mule scale for these distances:

Between Denver, Colo., and—	Distance	Per car	Rate per 100 pounds	Per car
	Miles		*Cents*	
Kansas City	640	$118.25	64	$147.20
St. Louis	919	141.90	75	172.50
Fort Worth	800	161.00	70	161.00

In the following exhibit the Texas complainants compare the rates per car from Kansas origins to Kansas City and St. Louis

with what the charges per car would be for the same distances under the southwestern horse and mule scale:

From—	To Kansas City				To St. Louis			
	Distance	Rate	12358 scale		Distance	Per car	12358 scale	
			Per 100 pounds	Per car			Per 100 pounds	Per car
	Miles		*Cents*		*Miles*		*Cents*	
Coffeyville, Kans.	168	$57.00	33	$73.60	418	$110.80	50	$113.00
Chetopa, Kans.	160	53.50	31	71.30	393	105.75	50	115.00
Parsons, Kans.	137	50.50	29	68.70	381	101.00	50	115.00
Erie, Kans.	121	50.50	27	62.10	403	101.00	52	119.60
Moran, Kans.	95	48.00	24	55.20	354	101.00	48	110.40
Selma, Kans.	79	41.50	24	55.20	338	101.00	47	108.10
Parker, Kans.	62	31.50	23	53.90	350	99.50	48	110.40
Bangor, Kans.	50	30.50	20.5	47.15	338	97.00	47	108.10

[1] Minimum 23,500 pounds.

Similar comparisons are made of the rates from Omaha and St. Louis to Kansas and Oklahoma destinations with rates for the same distances under the southwestern horse and mule scale:

To—	From Omaha				From St. Louis			
	Distance	Rate	12358		Distance	Rate	12358	
			Per 100 pounds	Per car			Per 100 pounds	Per car
	Miles		*Cents*		*Miles*		*Cents*	
West Wichita, Kans.	373.4	$100.50	50	$115.00	496.3	$116.50	57	$131.10
Waldron, Kans.	442.6	104.00	34.5	128.35	565.5	119.00	60	138.00
Aline, Okla.	481.7	128.00	57	131.10	604.6	131.50	63	144.90
Canton, Okla.	516.3	137.50	60	138.00	638.2	143.00	64	147.20
Arapaho, Okla.	557.6	141.00	60	138.00	679.5	147.50	66	151.80
Blair, Okla.	619.9	154.00	63	144.90	741.6	160.50	68	156.40

In the following table the rates under the southwestern horse and mule scale are compared with the intrastate rates for the same distances in Kansas, Nebraska, and Colorado:

	12358 scale		Intrastate rates		
	Per 100 pounds	Per car	In Kansas	In Nebraska	In Colorado
	Cents				
100 miles	24	$55.20	$51.70	$51.70	$63.25
200 miles	35	80.50	68.20	68.20	83.60
300 miles	44	101.20	81.95	81.95	97.90
400 miles	50	115.00	97.35	97.35	111.68
450 miles	53.5	123.05	102.85	102.40	.....
500 miles	56	128.80	.....	102.90	.....

The intrastate rates in the States shown are much lower than the interstate rates for like distances under the southwestern horse and mule scale.

The foregoing comparisons and others of a similar nature indicate that dealers at Fort Worth and Oklahoma City shipping under the southwestern horse and mule scale are at a disadvantage in competition with those located in Kansas, Missouri, and Nebraska. The subnormal character of the intrastate rates for like distances in the States named is also apparent.

SCALES OF RATES PROPOSED BY CHAMBERS OF COMMERCE OF KANSAS CITY AND ST. JOSEPH

The chambers of commerce of Kansas City and St. Joseph propose two scales, scale A for application in southwest territory, and scale B for western trunk-line territory, including within the latter designation Kansas and southern Missouri. The proposed scales progress at a fixed rate of progression of 6 cents for each additional 100 miles beyond 100. The proposed rate for 100 miles under scale A is 24 cents, and under scale B, 21 cents. In support of the principle of a fixed rate of progression, the Kansas City and St. Joseph interests refer to the scale for distances 950 to 2,000 miles, governing the transportation of beef cattle, sheep, and lambs, prescribed by division 4 in *American National Live Stock Asso. v. O.-W. R.R. & N. Co.*, 109 I.C.C. 621. A uniform progression of 2 cents per 100 pounds was employed for each block of 50 miles over 950 miles.

The scales proposed by the chambers of commerce of Kansas City and St. Joseph would produce both increases and decreases as compared with the present rates from Kansas and Colorado origins; but such scales are considerably lower than the southwestern horse and mule scale.

In the following table will be found a comparison of the averages of the present rates on horses and mules from eight representative origin points, five in Kansas and three in Colorado, to Kansas City, St. Louis, and Chicago, with the averages of the charges which would obtain had the southwestern horse and mule scale gone into effect between the points shown, and the average differences in the per car charges to these destinations under the present rates and under those proposed:

From representative points	To Kansas City	To St. Louis	To Chicago
Averages:			
Mileage.....miles..	309	668	826
Present charges per 36-foot car.....	$88.25	$130.35	$155.80
No. 12356 scale:			
Rate.....cents..	46.75	64.25	71.75
Charges per 36-foot car.....	$112.20	$148.00	$165.00
Kansas City proposed scale B:			
Rate.....cents..	39	48	55.7
Charges per 36-foot car.....	$90.00	$128.00	$151.00
Excess of per car charges over Kansas City:			
Under 12356 scale.....	.....	$35.80	$42.80
Under Kansas City scale B.....	.....	$38.00	$61.00
Present rate.....	.....	$42.10	$67.25

The rates to Chicago from the origins shown are not in issue, but are set forth for comparative purposes. It is contended by the Kansas City and St. Joseph interests that their proposed scale would result in a more equitable adjustment in the rates to Kansas City, compared with the rates to St. Louis and Chicago.

There are at present no joint through rates on horses and mules from Kansas City and St. Joseph to destinations east of the Mississippi River, but in view of our decision in *White Provision Co.* v. *A., B. & A. Ry Co.*, 118 I.C.C. 601, prescribing joint through rates on cattle and hogs from western markets to the Southeast, similar action is being urged with respect to the rates on horses and mules in No. 24674, *J. W. Patterson* v. *Alabama Great Southern Railroad*, and cases consolidated therewith.

While there are no joint through rates on horses and mules to the Southeast from Kansas City and St. Joseph, proportional rates are published to the Mississippi River crossings, and we are urged to direct the continued publication of such rates on a basis 10 cents under the local rates to the crossings. The present local and proportional rates from Kansas City and St. Joseph to the Mississippi River are as follows: From Kansas City, to St. Louis, local rate 30.5 cents, proportional 29.5 cents; to Memphis, local rate 58 cents, proportional 47.5 cents (reduced to 100-pound basis).

PROPOSED SCALE OF WICHITA CHAMBER OF COMMERCE

Horses and mules handled through the Wichita market are distributed mostly in the Southeast. The Wichita Chamber of Commerce and associated interests propose a single-line and joint-line scale for application within the Southwest, from the Southwest to the Southeast, and from Kansas City and Wichita to the Southeast. This scale is constructed by adding 15 percent to a proposed fat-cattle scale, which in turn is constructed as follows: For distances of 450 miles and less, the 1716 cattle scale prescribed in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I.C.C. 160, 176, brought to date by applying thereto subsequent increases and reductions; for distances over 450 miles to and including 950 miles, the amended Shreveport cattle scale prescribed in *Shreveport-Texas Cattle, Lignite, Wood, and Tanbark*, 48 I.C.C. 283, 292, and 2797 scale published in 1919 by the Director General of Railroads, similarly brought to date; and for distances over 950 miles, the northwestern scale prescribed in *American National Live Stock Asso.* v. *O.-W. R.R. & N. Co., supra.* This scale is considerably lower than

the southwestern horse and mule scale, but bears little resemblance to the scales proposed by the Kansas City and St. Joseph interests.

The Wichita Chamber of Commerce points out that in our original decision in No. 11018, *Wichita Board of Commerce case*, *supra*, we found that the rate from Wichita to Memphis was unduly prejudicial to the extent that it exceeded the rate from Kansas City to Memphis by more than $10 per car, which difference (Wichita over Memphis) was by subsequent order increased to $13.50 per car in the rates to Arkansas points on the line of the St. Louis-San Francisco Railway Company between Wichita and Memphis; that in the subsequent decision in no. 12358 the southwestern horse and mule scale was prescribed for application to west-bank Mississippi River crossings, to which was added a fixed arbitrary to make the rates to east-bank points; that while the local rates to Memphis have been constructed on the basis of the southwestern horse and mule scale, proportional rates for use in connection with movements to the Southeast have been published from both Kansas and Wichita, and that the proportional rate from Kansas City to Memphis does not bear the same relation to the Kansas City-Memphis local rate as the Wichita-Memphis proportional rate bears to the Wichita-Memphis local rate. The local rate from Wichita to Memphis is 62 cents per 100 pounds, equivalent to $142.60 per standard car, minimum 23,000 pounds. The proportional rate from Wichita to Memphis is $110.50 per standard car, which rate is 77.5 percent of the southwestern horse and mule scale rate to Memphis. From Kansas City to Memphis the local rate is 58 cents per 100 pounds, equivalent to $133.40 per standard car, whereas the proportional rate between these points is $91.50, or only 68.6 percent of the local rate from Kansas City to Memphis. If the same percentage relation which the proportional rate from Kansas City to Memphis bears to the local rate between these points were applied to the local rate from Wichita to Memphis to obtain the proportional rate from that point to Memphis it would result in a rate of $97.82, instead of $110.50. Conversely, application of the percentage relation which the Wichita-Memphis proportional rate bears to the Wichita-Memphis local rate to the local rate from Kansas City to Memphis, to obtain the proportional rate from Kansas City, would result in a rate of $103.40, instead of $91.50. The spread in the proportional rates, Wichita over Kansas City, is $19; but if the proportional rate from Wichita to Memphis were constructed on the same percentage relation that the proportional rate bears to the local rate from Kansas City to Memphis, the spread between

Wichita and Kansas City would be only $6.32. This spread in the proportional rates the Wichita Chamber of Commerce claims is unduly prejudicial to the Wichita dealer, as the proportional rates are used in constructing through rates to the Southeast.

Prior to April 1917, the southbound rates to Texas points were on the class C basis, at which time they were increased to class A basis. As a consequence of the revision in the class rates made in the southwestern revision, the present class C, or column 30, rates are lower than the southwestern horse and mule scale. This fact the Wichita Chamber of Commerce advances as evidence of the unreasonableness of the southwestern horse and mule scale.

RATES FROM KANSAS

At present there are unwarranted disparities between the rates from border points in Kansas and Oklahoma to Kansas City. For example, from Arkansas City, Kans., to Kansas City, the present rate is $69.30 per 36-foot car. Under the southwestern horse and mule scale, the rate from Newkirk, Okla., 12 miles beyond, is $92 per car. From Caney, Kans., 188 miles from Kansas City, the present rate is $57.20 per car, and the rate from Owen, Okla., 2 miles farther distant, is $78.20, under the southwestern horse and mule scale.

RATES FROM NEBRASKA

When the new western-district rates on cattle were published effective January 25, 1932, no revision was made in the rates on horses and mules. From points in Nebraska or South Dakota, therefore, the rates are no longer 115 percent of the cattle rates, the basis approved in *Nebraska Livestock Case*, and prescribed in the *South Dakota case*. From Nebraska points to South Omaha, the rates on cattle were generally increased on January 25, 1932, and the present rates on horses and mules are generally less than 115 percent of the cattle rates. The minimum weight on cattle is 22,000 pounds. The carriers filed an application with the Nebraska commission for authority to apply the interstate scale on intrastate traffic. Although the application is still pending, a witness for the Nebraska commission was authorized to say that the application to put in the No. 17000, Part 9, rates to South Omaha would be granted. The rates suggested in *Nebraska Livestock Case* were not put in on intrastate traffic, except to South Omaha.

The movement of livestock, including horses and mules, by truck appears to be increasing. At South Omaha, in 1927, 11.53 percent of the total receipts of horses and mules were brought in by trucks.

This percentage has increased each year, until in 1931 it amounted to 24.64 percent, and for the first 4 months of 1932, was 27.59 percent. On cattle the percentage brought in by truck in 1931 was 31.47, and for first 4 months of 1932 was 44.40 percent. This competition is so serious that the carriers have put in rates on cattle, calves, hogs, etc., with a very low minimum, the lowest being 6,500 pounds with a rate which is approximately 150 percent of the No. 17000, Part 9, rate. The average haul by truck into South Omaha on January 5, 1931, was 79.4 miles from points in Nebraska.

RATES FROM SOUTH DAKOTA

The rate situation in South Dakota presents a somewhat different problem from that involved in the southwestern and western trunk-line States, previously discussed. Shipments from points of origin in South Dakota move mostly to destinations in Iowa, Minnesota, and Illinois, and not to the Southwest or Southeast. Of the carload shipments from South Dakota in the year 1918, of 1,093 cars of horses and mules, 438 moved to various stations, mostly in the three States above named, 309 cars went to Sioux City, and 157 to East St. Louis for reforwarding to eastern destinations; and of the remainder only 4 cars went to Kansas City. There was no movement to Fort Worth or other southwestern market. It is the contention of the South Dakota interests that any adjustment in the rates from this State should be made with relation to the rates from Minnesota and Iowa; and that as the rates from the two latter States are not in issue, a satisfactory disposition cannot be made on this record of the rate situation with respect to South Dakota. They are opposed to any change in the present rates, but if their rates are to be revised they strongly urge that the rates on horses and mules should be made 110 percent of the fat-cattle scale recently prescribed by us.

The Board of Railroad Commissioners of South Dakota submitted various cost studies to prove that the investment per mile of road and operating costs per mile of road were less in South Dakota than on other divisions of the principal roads serving that State. Traffic-density statistics were also introduced tending to show as favorable traffic density on certain divisions in South Dakota as in the surrounding States of Minnesota, Iowa, and Nebraska.

Comparison of the population per square mile, population per mile of railroad, value of the livestock, value of crops, value of the farm property, and acreage of corn, wheat, and oats of eastern South Dakota counties with those of southern Minnesota indicates that the productivity of eastern South Dakota compares very favorably with that of southern Minnesota.

We conclude, as we said on page 458 of the original decision in the *South Dakota case:*

> • • • as we have had occasion in other cases to remark, traffic and transportation conditions are not radically different in eastern South Dakota from what they are in the adjoining portions of Minnesota, Iowa, and Nebraska. There is also some evidence that the lighter traffic density in South Dakota, as a whole, is offset, to an extent at least, by relatively lower operating expenses; and by a lower value of carrier property per mile of line than in most of the other States in the same general territory.

We find many inconsistencies in the rates from South Dakota in their relation to the rates from nearby points in adjacent States to the primary markets. For example, the rate from Alcester, S.Dak., to South Omaha, 149 miles, is 29.5 cents, while the rate from Hawarden, Iowa, to South Omaha, 140 miles, is 22.5 cents. Thus, the rate from Alcester to South Omaha is 7 cents higher than the rate from Hawarden for a distance but 9 miles longer. Stated another way, the rate from Alcester to South Omaha is 31 percent greater than the rate from Hawarden to the same point, while the mileage is only 6.4 percent longer. This difference is due to the lower measure of rates applying within Iowa. A similar situation exists when we consider the rates from South Dakota to South St. Paul, Minn., as compared with neighboring origins in southern Minnesota. For example, the rate from Ortonville, Minn., to South St. Paul is 26 cents, from Milbank, S.Dak., to South St. Paul the rate is 32 cents, a difference of 6 cents per 100 pounds for a difference in distance of only 11 miles. Other maladjustments are shown in the rates from South Dakota origins to primary markets as compared with the rates from origins in adjacent States.

The rates on horses and mules under the South Dakota scale prescribed in no. 12268 for 50, 100, 200, and 300 miles are considerably higher than like rates for the same distances obtaining intrastate in Minnesota, Illinois, Nebraska, and Iowa. Rates from South Dakota origins to Sioux City are higher than rates for somewhat comparable distances from stations on the line of the Great Northern Railway Company in Minnesota and North Dakota to St. Paul, from St. Louis-San Francisco stations in Kansas to Kansas City, and from Chicago, Burlington & Quincy stations in Nebraska to Omaha. The earnings per car and per car-mile on horses for the average haul on eight representative western railroads, computed on the average loadings for the year 1924, were substantially lower than would have been produced by application of the no. 12268 scale to the same distances. Similar figures for 59 western roads show an average haul on horses of 226 miles and average earnings

of 28.5 cents a car-mile and 24.4 mills a ton-mile, as compared with 35.6 cents a car-mile and 30.5 mills a ton-mile which would have been produced by application of the 12268 scale to the average haul. The average car loading of horses and mules for the eight representative carriers range from 10.5 to 12.16 tons. The average loading of horses and mules for the 59 western roads in 1924 was 11.68 tons.

The new western-district rates on edible livestock became effective January 25, 1932. The investigation was reopened for further hearing, but our general conclusions as to the level of the rates were not changed. These rates resulted generally in increases in the rates on edible livestock from South Dakota and other points in western trunk-line territory to Chicago, Milwaukee, Wis., East St. Louis, and related points. In view of these increases the South Dakota commission contends that the relation to the fat-cattle rates of 115 percent fixed in the *South Dakota case* is too high, and that the relation should not exceed 110 percent. If the horse and mule rates were made 10 percent over the no. 17000, part 9, fat-cattle rates, some reductions would occur from the territory south of Mitchell, S.Dak., and from the territory west of Aberdeen, S.Dak., but increases would occur from the territory between Mitchell and Aberdeen. Rates 115 percent of the no. 17000, part 9, fat-cattle rates, would generally result in increases from all parts of the State.

The following table shows the earnings under rates on horses and mules made 110 and 115 percent of the no. 17000, part 9, rates on fat cattle:

Distance	110 percent of fat-cattle rate	Earnings per car	Car-mile earnings[1]	Ton-mile earnings	115 percent of fat-cattle rate	Earnings per car	Car-mile earnings[1]	Ton-mile earnings
	Cents		*Cents*	*Mills*	*Cents*		*Cents*	*Mills*
100 miles	22	$51.44	51.4	44	23	$53.77	53.8	46
200 miles	29.5	68.97	34.5	29.5	31	72.48	36.2	31
300 miles	33	81.53	27.3	23.4	37	86.51	28.9	24.7
400 miles	40.5	94.69	23.7	20.3	42.5	99.37	24.8	21.3
600 miles	80.5	118.07	19.7	16.8	53	123.91	20.6	17.7
800 miles	59.5	139.11	17.4	14.9	62	144.96	18.1	15.5
1,000 miles	68	158.98	15.9	13.6	71.5	168.17	16.8	14.3

[1] Using average loading of horses and mules originating in South Dakota in 1929, 11.69 tons.

The fat-cattle rates prescribed or approved (as in the case of the southern territory compromise scale) in recent general livestock cases, and the percentage relation of the western and southern scales to the central-territory scale are shown in the following table:

Distance	No. 17000, Part 9, Mountain-Pacific scale		No. 17000, Part 9, Southwestern-western trunk-line scale		No. 17000, Part 9, southern territory single-line compromise scale		Eastern livestock cases of 1926, 165 I.C.C. 277. C.F.A. scale
	Rate	Percent of C.F.A. scale	Rate	Percent of C.F.A. scale	Rate	Percent of C.F.A. scale	Rate
	Cents		*Cents*		*Cents*		*Cents*
50 miles	16.5	118	15	107	14	100	14
100 miles	22	116	20	105	19	100	19
200 miles	29.5	123	27	112	27.5	115	24
300 miles	35	121	32	110	35	121	29
400 miles	40.5	119	37	109	41	121	34
500 miles	46	118	42	108	46	118	39
600 miles	50.5	117	46	107	49	114	43
700 miles	55	120	50	109	53	115	46
800 miles	59.5	121	54	110	56	114	49
Average		119		108.5		109	

At prior hearings the carriers proposed class A of the then existing class rates. The new class A rates from South Dakota to Chicago, Sioux City, and St. Louis are generally higher. The present rates on horses and mules from 10 representative points in South Dakota to Chicago average 30.8 cents, while the present class A rates average 76.7 cents. Defendants' proposal would mean an increase of approximately 50 percent in these rates. The present rates on horses and mules from these points to St. Louis average 57.1 cents, and the present class A rates average 84 cents. The application of class A would mean an increase of 47 percent.

CARRIERS' EVIDENCE

The carriers propose class A rates (45 percent of first class) as prescribed in the southwestern and western trunk-line revisions, for both joint-line and single-line application.

Appendix C is a comparison for representative distances from 50 to 1,000 miles of column 45 of the southwestern scale with the southeastern or so-called compromise scale increased by 10 percent. The compromise scale is increased by 10 percent for comparative purposes, because in the southwestern revision we prescribed first-class rates in the Southwest which are approximately 10 percent higher than the corresponding first-class rates applicable within southern territory. Comparison is also made with the present southwestern horse and mule scale, showing constructive rates for distances up to 1,000 miles.

The compromise scale increased 10 percent is considerably higher than the southwestern horse and mule scale for all distances over 10

miles. The carriers' proposed column 45 rates, for single-line and joint-line application, exceed the southwestern joint-line scale for all distances over 20 miles. Column 45 grades up much more rapidly than either the compromise or the southwestern horse and mule scale.

Numerous exhibits were introduced by the carriers to show that the rates on horses and mules in the Southwest and western trunk-line territory are unreasonably low. One of the most pertinent of these is attached hereto as Appendix D. In this exhibit the revenues per car, per gross car-mile, and per gross ton-mile on horses and mules from Kansas City to Fort Worth, computed on the basis of the proposed column 45 rates and minimum weight of 23,000 pounds, are compared with similar earnings yielded by 37 different commodities shipped between the same points under the rates and ratings prescribed in the original report in the southwestern revision. The average weights used are for actual shipments made over the line of the Fort Worth & Denver City Railway Company for the first six months of 1928, and where minimum weights are used they are so indicated. The empty mileage shown in column 4 is derived by multiplying the distance between Kansas City and Fort Worth by the percentage of empty-car movement to the loaded-car movement as determined by a study which was made, for the month of October 1926, of the loaded and empty car movements on 35 western railroads. This study indicated that the empty-car haul of stock cars averaged 88.12 percent, box cars 24.47 percent, refrigerator cars 66.85 percent, and poultry cars 97.07 percent of the total haul. The gross ton-miles shown in column 8 are derived by adding to the gross ton-miles of the loaded haul the gross ton-miles of the empty haul, using weights of 16 tons for stock cars, 19 tons for box cars, 26 tons for refrigerator cars, and 20 tons for poultry cars. The gross car-miles set forth in column 10 are derived by determining the gross car-miles of the empty haul, adding thereto the gross car-miles of the loaded haul, and dividing the revenue per car by this total. While the results of these computations are in a measure theoretical, inasmuch as they do not represent the exact percentage of empty movement of actual shipments between Fort Worth and Kansas City, they are as nearly accurate as it is possible for the carriers to obtain. The criticism of this exhibit, which criticism applies to practically all of the exhibits submitted by the carriers bearing on the contention that the rates on horses and mules are too low, is that the comparisons are with commodities that have few transportation characteristics in common with horses and mules. For example, there is nothing comparable between a carload of horses

and mules and a carload of butter, green coffee, or scrap iron. In fact the only apt comparison is with other kinds of livestock. When the rates on different commodities are compared, the car-mile earnings afford a better index than ton-mile earnings. The earnings per gross (loaded and empty) car-mile on horses and mules under carriers' proposed column 45 rates are lower than on any commodity shown except cans, drums, and junk.

Comparison is also made with the rates on horses and mules from various points in central territory to Buffalo, and the percentage relationship that these rates bear to the first-class rates from and to the same points. These comparisons show that the horse and mule rates from Michigan, Ohio, Indiana, and Illinois to Buffalo range from 68.1 percent to 82.9 percent of the first-class rates. By similar comparison it is shown that the rates from points of origin in Kansas to Kansas City are only 25 percent of first class, and from the same points to St. Louis but 30 percent of first class. The extent of the movement under the central-territory rates is not shown. Horses and mules move generally on class 2 rates in central territory. The rates we are here considering are those applying from the main producing area of the United States, while the Central and Southern States are not large producers of horses and mules or other forms of livestock.

In support of their contention that the present rates on horses and mules under the Nebraska and South Dakota scales are too low, the western trunk-line carriers introduced numerous comparisons. Thus, the charges per car on horses and mules from 13 Nebraska stations to South Omaha, for distances ranging from 154 to 393 miles, are compared with a like rate from substantially equidistant Iowa stations to Chicago. The average charge per car is $75.74 from the Nebraska points to South Omaha, and $93.65 from Iowa points to Chicago, for an approximate average distance of 260 miles.

The eastern livestock scale on fat cattle prescribed for central territory averages 34 percent of the first-class rates in that territory, while the no. 17000, part 9, scale on fat cattle averages 29.5 percent of zone I first-class rates, 26.5 percent of the zone II first-class rates, and 24.5 percent of the zone III first-class rates prescribed in the western trunk-line revision. The percentage of the first-class rates in zones I, II, and III to the eastern scale of first-class rates is 125, 140, and 150.5 percent, respectively. These averages are for distances up to 800 miles.

Second class, applicable to horses and mules in eastern territory, is 85 percent of first, and fourth class, prescribed for application on horses for slaughter in eastern territory, is 50 percent of first class.

Column 45, or class A, in zone I of western trunk-line territory averages 150 percent of the no. 17000, part 9, fat-cattle rates in western trunk-line and southwestern territories. Column 45 in zone II averages 167.5 percent, and column 45 in zone III averages 179 percent of such fat-cattle rates. These averages are for distances up to 800 miles.

The rate of return on the book investment of class I railroads in the western district, considered as a whole, was 3.01 percent in 1921, 3.39 percent in 1922, 3.78 percent in 1923, 3.74 percent in 1924, 4.01 percent in 1925, 4.30 percent in 1926, 3.79 percent in 1927, 4.26 percent in 1928, 4.41 percent in 1929, 3.07 percent in 1930, and 1.83 percent in 1931. The rate of return on the property investment ascertained by applying 91.85 percent of the carriers book investment in road and equipment, that being the precentage relationship to book investment found by us in *Increased Rates 1920*, 58 I.C.C. 220, and adding net additions and betterments since 1920 was as follows: 3.43 percent in 1921, 3.86 percent in 1922, 4.28 percent in 1923, 4.21 percent in 1924, 4.52 percent in 1925, 4.83 percent in 1926, 4.23 percent in 1927, 4.74 percent in 1928, 4.93 percent in 1929, 3.41 percent in 1930, and 2.03 percent in 1931.

The rate of return on the book investment of class I railroads in the western district for the first 3 months of 1932 was at the annual rate of 0.36 percent. For the same 3 months in 1931, the rate of return was at the annual rate of 1.84 percent. Sixty-seven class I railroads operated at a loss for the first 3 months of 1932, of which 19 were in the eastern district, 14 in the southern, and 34 in the western district. In the western district the number of employees for the month of January 1932 was 60.78 percent of the average for 1926.

Since the estimate of values in the western district was made by us in 1920, our primary values have been generally completed and published, and, under the provisions of section 19a of the act are prima facie evidence of the values of the properties of the carriers as of the dates thereof. They constitute a higher grade of evidence than estimates such as those outlined, but have not been employed by the parties in this proceeding.

The average revenue per ton-mile for the western district decreased 20.11 percent, or from 14.22 mills in 1921 to 11.36 mills in 1931. The average revenue per passenger-mile for the western district was 3.271 cents in 1921, and 2.497 cents in 1931, a reduction of 23.66 percent. The passenger revenue for 1931 was 37.81 percent of what it was in 1921, and the passengers carried 1 mile per mile of line but 49.51 percent of the number in 1921.

COMPROMISE SCALE IN SOUTHEAST

The compromise scale heretofore referred to is the result of agreement between the southern carriers and livestock shippers in southern territory following the suspension of a proposal of the carriers to establish a uniform distance scale of rates in southern territory. The agreement covered the rates on edible livestock as well as those on horses and mules. The compromise rates were lower than those suspended but higher than those sought by the shippers. The history of these compromise scales is fully set forth in *Livestock, Southern Territory, Rates*, 171 I.C.C. 721. The compromised-scale rates on horses and mules are lower than those which would have resulted under the scale of rates approved for application within the Southeast in *Hudson Mule Co.* v. *L. & N. R.R. Co.*, 63 I.C.C. 6, subjected to the 1920 increase and 1922 reduction. The compromise scale is 0.5 to 2.5 cents lower up to 350 miles, and 3 to 6 cents lower up to 1,000 miles than the Hudson mule scale. The southwestern scale for distances of 100 to 400 miles is 1 to 4.5 cents less than the Hudson mule scale. For distances of 450 to 1,000 miles the southwestern scale is 0.5 to 1.5 cents higher than the Hudson mule scale. The southwestern scale for distances of 100 to 250 miles is 2 to 4 cents lower than the compromise scale. At 300 miles these two scales are the same. From 350 to 1,000 miles the southwestern scale is 2 to 6 cents higher than the compromise scale. In the *Hudson Mule case* we directed the carriers, in establishing the rates there approved, to use the shortest workable route, whether over two or more lines. The compromise scale grew out of this scale, and the method of computing distances was not changed. In prescribing the southwestern horse and mule scale we said that in computing distances the shortest possible routes should be used, but such routes need not embrace more than three lines.

The following table shows the comparative rates and percentage relation between the horse and mule scale and the cattle scale in southern territory. No uniform relation exists.

	Compromise scales, single line		Percentage, horses and mules to cattle
	Horses and mules	Cattle	
	Cents	*Cents*	
100 miles	28	19	147.3
200 miles	37	27.5	134.5
300 miles	44	33	133.7
400 miles	48	41	117
510 miles	53.5	46	116.3
600 miles	56.5	49	115.3
690 miles	60	52	115.3
790 miles	64	55	116.3
910 miles	68.5	58	118.1
1,000 miles	72	60	120
Average			122.5

GENERAL

The following table shows the relation between the southwestern horse and mule scale, the southwestern scale of class B rates, and 115 percent of the scale of rates prescribed by us for application on fat cattle in western trunk-line and southwestern territories.

Distance	13535 class B rate	Southwestern horse and mule scale		115 percent of no. 17000, part 9, cattle scale
		Single line	Joint line	
	Cents	*Cents*	*Cents*	*Cents*
100 miles	26	24	27	23
200 miles	35	35	38	31
300 miles	43	44	46	37
400 miles	51	50	51	42.5
500 miles	57	56	57	48.5
600 miles	62	61.5	61.5	53
700 miles	68	66	66	57.5
800 miles	74	70	70	62
900 miles	78	74	74	66.5
1,000 miles	82	78	78	71.5

The southwestern single-line scale averages 97 percent of the southwestern class B rates, and the joint-line scale 98.7 percent of that class scale. The fat-cattle rates were prescribed for both single-line and joint-line application. The 115 percent basis now applies on calves and hogs in single-deck cars.

Some of the various scales applying in western trunk-line territory are compared, in the following table, with the western trunk-line scales of class B rates, and with 115 percent of fat-cattle scale applying in that territory.

Distance	Western trunk-line class B rates			Northern Missouri scale	Southern Nebraska scale	South Dakota scale	Colorado-Kansas scale	115 percent of no. 17000 part 9 cattle scale
	Zone I	Zone II	Zone III					
	Cents	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
100 miles	22	25	27	20.5	20	23	26.5	23
200 miles	30	34	36	26.5	26	32	36.5	31
300 miles	36	40	43	31	32	37	42.5	37
400 miles	41	46	49	.....	39	40.5	48.5	42.5
500 miles	46	53	56	.....	48	44.5	54.5	48.5
600 miles	51	58	62	.....	57.5	49	.....	53
700 miles	57	63	68	.....	.....	53.5	.....	57.5
800 miles	60	68	73	.....	.....	58	.....	62
900 miles	64	72	78	.....	.....	59	.....	66.5
1,000 miles	68	76	82	.....	.....	63	.....	71.5

CONCLUSIONS

In this consolidated proceeding we are called upon to determine the scale or scales of rates proper for application on horses and mules from and to points in the territories covered by these several cases.

Four preliminary questions confront us: (1) Whether differentials should apply on traffic between points in Texas differential territory and New Mexico, on the one hand, and southwestern markets, on the other, as found in *Rates on Horses and Mules in the Southwest, supra;* (2) whether a higher level of rates should apply in Texas common-point territory than in Kansas, Nebraska, and other western trunk-line States; (3) whether different rate levels should apply in southwestern and western trunk-line territories; and (4) whether operating conditions in South Dakota warrant the prescription of the same rate level in that State as that obtaining in nearby States. The evidence dealing with these questions, particularly with Texas and New Mexico differential territory, is comprehensive and detailed. Except as supplemented or modified at the further hearing, the proposed report of the examiner contains a detailed statement and discussion of the facts in the light of the contentions of the parties. Much of the evidence is the same as or similar to that introduced and considered in *Live Stock—Western District Rates, supra.* Upon an exhaustive record in that proceeding we fixed, among other things, scales of rates on cattle and other edible livestock to apply uniformly within the western district of the United States lying east of the Rocky Mountains. That district embraces the territories under consideration in the cases covered by the instant proceeding. The evidence presented dealing with the above questions is convincing that the finding made respecting the rates on livestock is proper, and that a similar finding should be made here. We conclude, therefore, that the scale of rates hereinafter fixed should apply uniformly throughout the territory covered by these consolidated cases.

A fundamental question is whether the rates on horses and mules should bear some fixed relation to the rates on other kinds of livestock, more particularly on fat cattle. The shippers and shipping organizations represented at the hearings are unanimously of the opinion that the rates on horses and mules should be related to the rates on fat cattle, and they cite the *Dimmitt-Caudle-Smith case*, the *South Dakota case*, and *Nebraska Livestock case*, wherein such a relationship was prescribed.

Various unusual expenses are incurred in the transportation of livestock. Among these are the costs of construction and maintenance of loading and unloading enclosures and runways. Special tracks have to be constructed to these yards, and facilities afforded for feeding, watering, and resting livestock in transit under the requirements of the Federal 28-hour law. Additional expenses are incurred in unloading and reloading livestock at public stockyards, and to comply with the State and Federal quarantine regulations.

Yards must be maintained for cleaning stock cars, and removing old bedding and rebedding the cars. The expense of moving stock cars from the Kansas City yards to the yards at Morris, Kans., and return is placed at 33 cents per car, while the average cost of cleaning the cars is stated to be $1.105 per car. The cost of bedding, which averages about 3 tons per car, is placed by the carriers at 2.5 to 8 times the amount of the tariff charge for this service. In addition, free transportation is afforded to caretakers, and additional risks and liabilities incurred in their transportation. Animals are moved under expedited service. In the course of transportation they require constant attention, and must be carefully handled to prevent injuries. The percentage of empty to loaded car movement, amounting to 83.12 percent as shown by a traffic study conducted on 35 western railroads during the month of October 1926, increases greatly the operating costs.

None of these expenses are peculiar to the transportation of horses and mules. They are incurred in the transportation of all livestock. Such evidence does not justify the singling out of horses and mules as the exception to the general application on all kinds of ordinary livestock of rates related to the fat-cattle rates. The only substantial transportation disadvantages of horses and mules as compared with other forms of ordinary livestock are a higher percentage of claims for loss and damage and a higher per car valuation. The shippers concede that horses and mules are more subject to injury than cattle, but they will be satisfied with a higher level of rates than may apply on cattle. The car revenue on horses and mules averages higher than on cattle because of higher rates and minimum weights. These factors, the shippers contend, outweigh the adverse factor of higher loss and damage claims.

Horses and mules are produced on the farms and ranges of the West under substantially the same conditions as cattle, and they are transported in the same manner. It is illogical to prescribe rates on this traffic unrelated to the rates on cattle, when the rates on hogs, sheep, and all other ordinary forms of livestock are based on the fat-cattle rates. The assertion that cattle, hogs, and sheep are subjected to severer competitive conditions than horses and mules has not been established. It is true that a low level of rates on cattle is necessary to move those animals to the primary markets, and that competitive conditions have affected those rates. But the cities which are primary markets for cattle, sheep, and hogs are also the primary markets for horses and mules. The competitive conditions which affect the rates on cattle consigned to those markets likewise must be considered in prescribing the rates on horses and mules.

We conclude, therefore, that the rates on horses and mules here in issue should be related to the corresponding rates on fat cattle.

In *Livestock—Western District Rates*, we prescribed 115 percent of the fat-cattle scale for application on calves and hogs, in single-deck cars, and 125 percent of that scale on sheep and goats, in single-deck cars. The 115 percent scale is lower than the southwestern horse and mule scale, the differences amounting to a reduction of 13.4 percent in the rates at 500 miles and to 8.3 percent in the rates at 1,000 miles. Compared with the prescribed eastern South Dakota single-line scale, it would result in increases commencing at 300 miles, which amount to 9 percent in the rate for 500 miles and to 12.6 percent in the rates for 1,000 miles. The 115 percent scale is substantially the same as the joint-line scale proposed by the Wichita Chamber of Commerce for application throughout the Southwest. It is lower than the Kansas City and St. Joseph Chamber of Commerce scale A, which is proposed for application throughout southwestern territory, but under 700 miles it is higher than scale B proposed for application within western trunk-line territory and from Kansas and southern Missouri. As compared with the approved southern and northern Nebraska single-line scales, it will generally produce increases below 500 miles. The 115 percent scale is higher than the proposed scale of the Board of Railroad Commissioners of South Dakota. It is, however, materially lower than the class A rates suggested by defendants, which would produce very material increases in the present rates in both southwestern and western trunk-line territories. The prescription here of rates on horses and mules made 115 percent of the fat-cattle rates prescribed by us would result in reductions in the considered rates on horses and mules from, to, and between points in the Southwest, and in increases in the rates from, to, and between points in the western trunk-line States.

Horses and mules load about 23,000 pounds in a standard car 36 feet 6 inches in length. The parties generally agree that a 23,000-pound minimum is proper, and the rates herein fixed will be subject to that minimum weight.

PROPORTIONAL RATES

We will not prescribe proportional rates lower than those herein found reasonable to the Mississippi River crossings. The carriers may publish such rates, reasonably related in ratio to the local rates from the primary markets, but without undue preference to any livestock market.

INTRASTATE RATES

None of the complaints comprised in these proceedings directly bring in issue the intrastate rates. In *Nebraska Livestock Case*, the

investigation was limited to a consideration of the intrastate rates from Nebraska origins to Omaha and South Omaha in their relation to the interstate rates from the same origins to Kansas City, St. Joseph, and Sioux City. A joint hearing was held in that case with the Nebraska State Railway Commission. A joint hearing in the present proceeding was had with the Public Service Commission of Kansas, which had before it an application of the carriers for permission to make the southwestern horse and mule scale applicable intrastate in Kansas. Failure to adjust the intrastate rates from Nebraska points to South Omaha to the same basis of the interstate rates herein found reasonable from Nebraska to South Omaha, Kansas City, St. Joseph, and Sioux City will result in undue preference to South Omaha and shippers to such point and undue prejudice to Kansas City, St. Joseph, and Sioux City and shippers to such markets, and in undue preference of intrastate commerce and undue prejudice to interstate commerce. Simultaneous action initiating the same measure of rates for intrastate application in the several States which will be affected by the rates prescribed under our findings in these cases would be highly desirable. In accordance with our practice no order with respect to intrastate rates will be made at this time.

FOURTH-SECTION APPLICATIONS

There were reassigned for further hearing portions of fourth-section applications nos. 461, 462, 621, 673, and 678. In the previous hearing in no. 12358, prior to the report in 93 I.C.C. 479, no evidence was submitted in support of such applications, and fourth-section relief was denied, except that the carriers were authorized to establish and maintain over all routes between Fort Worth, Wichita, Kansas City, St. Joseph, St. Louis, and Oklahoma City, on the one hand, and points in southwestern territory, as described in the appendix to the report in 93 I.C.C. 479, the lowest rates prescribed or approved in the said report as maximum over any route between the said points, and to maintain higher rates from, to, and between intermediate points, subject to the limitations that the rates from, to, and between the said intermediate points did not exceed the scale of rates prescribed in the report as maximum rates for application at such intermediate points and that they did not exceed the lowest combination.

Upon further hearing herein, no evidence was offered by the carriers in support of their applications. They state that application no. 461 has been covered by fourth-section order no. 9129, that application no. 462 was withdrawn, and that applications nos. 621, 673, and 678 have been covered by fourth-section orders nos. 9059, 9183, and 9711.

Fourth-section relief may be necessary in order that rates in conformity with the findings herein may be established. Accordingly, defendants may file applications for such relief as they may require in connection with the rates here prescribed. The above-numbered applications will be denied and the outstanding fourth-section orders will be vacated six months after the service of this report. In instances in which applications are filed within 90 days after service of this report, consideration will be given to the entry of an order granting temporary relief to aid the establishment of the rates in conformity with the findings herein made and to maintain such rates until final action upon such applications.

FINDINGS

We find that maximum reasonable rates for the transportation of horses, mules, burros, and asses between points in the territory described at the beginning of this report will be 115 percent of the rates on cattle from and to the same points, prescribed in *Livestock—Western District Rates*, subject to a minimum of 23,000 pounds; that rates in excess thereof are, and for the future will be, unreasonable, and our findings in *Horse and Mule Rates in the Southwest, 1924*, *Rates on Horses and Mules in the Southwest*, *Nebraska Livestock Case*, and *South Dakota case* are modified accordingly.

In general the above findings change the former findings in these consolidated cases by substituting for the several scales of rates fixed therein on horses and mules the scale of rates herein found reasonable for general application in the territory covered by these cases. The former findings under section 3 in connection with the interstate rates remain unchanged, and the finding against the Nebraska intrastate rates modifies the former finding made in connection with those rates only with respect to the measure of the scales of rates approved in that case. Our orders requiring compliance with our former findings in these reopened cases respecting the rates on horses and mules will be vacated and set aside. No orders requiring the establishment of rates in conformity with the revised findings will now be entered, but defendants will be expected to establish such rates within 90 days after the service of this report. In case this is not done, we will consider the entry of appropriate orders.

ATTCHISON, *Commissioner*, dissenting:

The last paragraph of COMMISSIONER PORTER'S dissent states my views so well that I desire merely to indicate my concurrence in that portion of his expression.

PORTER, *Commissioner*, dissenting:

The majority here again falls into the fundamental error of grouping on one rate basis practically all of the territory bounded by the Mississippi River on the east and the Rocky Mountains on the west although we have many times prescribed lower rates for application within western trunk-line territory than within the Southwest. With that principle I disagreed in *Livestock—Western District Rates*, 176 I.C.C. 1. My reasons for that disagreement were there fully set forth and will not be repeated. The results under the majority findings will be substantially the same as in that proceeding in that the rates between points in western trunk-line territory generally speaking will be increased considerably whereas those in the Southwest will be rather substantially reduced.

The southwestern rates on horses and mules, as stated in the report, were prescribed by the Commission and became effective on May 20, 1925, except from or to points in Kansas, Colorado, and southern Missouri, to or from Wichita, Kansas City, St. Joseph, and St. Louis. The case was reopened as to those features upon request of the Public Service Commission of Kansas and the Chamber of Commerce of Kansas City, Mo. Thereafter Texas, Oklahoma, and Arkansas interests expressed dissatisfaction with the differing levels which would exist as between Kansas and the Southwest. This would indicate that the southwestern shippers had no particular objection to the level of the rates prescribed in the southwestern case but that their objection arose largely because between certain portions of the territory originally considered the rates prescribed did not become effective.

The rates here prescribed by the majority for application within the Southwest for distances of 100 to 1,000 miles will be from 1 cent to 8.5 cents lower than those prescribed in the southwestern case, and from 0.5 cent to 7 cents lower than the compromise horse and mule scale applicable in the Southeast, which scale we have on two occasions found not unreasonable. *Livestock to, from, and between Points in Southeast*, 74 I.C.C. 419. *Livestock, Southern Territory, Rates*, 171 I.C.C. 721. This is not the case at present, the rates for single-line application for distances up to 300 miles being the same or lower than the compromise scale, and beyond that distance higher than that scale. We recognized in the last-mentioned proceeding that the mere fact that rates on edible livestock in the South were higher than those in other territories was not sufficient to warrant condemnation thereof. The rates which were prescribed in the *Western Livestock Case* for application on edible livestock

in the Southwest are likewise lower than those in the Southeast, the spreads ranging up to 4 cents. The volume of movement in the Southeast is considerably lighter than in the West and that fact was considered in finding the compromise edible-livestock scale in the Southeast not unreasonable. The trend of the movement of edible livestock in the West differs from that of this southwestern horse and mule traffic which, the majority states, flows largely to the Southeast. In addition to my general objections to the inclusion of all this territory in one rate group, it is my opinion that the spreads in the rates prescribed for application in the Southwest and those found not unreasonable in the Southeast are too great.

Undoubtedly, in view of the varying bases of rates applicable within the territory here considered, some revision is necessary. In making this revision, however, we should be governed by the principle many times recognized in the past that western trunk-line territory is lower rated territory than the Southwest. This was done in the class-rate cases. Considering that, insofar as horses and mules are concerned, we have recognized Texas differential territory as higher rated territory, which was not true as respects edible livestock, it is my opinion that we should prescribe a level of rates somewhat higher than that here proposed by the majority for application in the Southwest and make the rates within western trunk-line territory approximately 5 percent lower.

MAHAFFIE, *Commissioner*, dissenting:

The rates required are based on rates prescribed in *Livestock—Western District Rates, supra.* Such a finding disregards, as the majority did in that case, differences in traffic and transportation conditions and differences in the consequent cost of service in this vast territory. In my judgment, there are no transportation reasons why the rates on these commodities should be related to those prescribed in the *Western case.* The class of livestock considered in the *Western case* differs materially in transportation characteristics from this traffic, particularly with respect to volume and character of movement, loss and damage claims, and value per head. In my opinion, we should prescribe in this proceeding rates no lower than the class B rates in effect in the territory.

COMMISSIONER MILLER did not participate in the disposition of this case.

APPENDIX A

Comparison of distance rates on horses and mules in carloads (in cents per 100 pounds)

Distance	North Missouri, 47 I.C.C. 287	South Missouri, 47 I.C.C. 287	South Nebraska, 89 I.C.C. 444	North Nebraska, 89 I.C.C. 444	South Dakota, 77 I.C.C. 451	Nebraska State	Colorado Kansas	Southwestern, 93 I.C.C. 479
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
25 miles	14	14	12	13	14	10.5		
50 miles	16	16	15	16.5	17.5	13.5		
75 miles	18.5	18.5	18.5	19.5	20.5	16.5		
100 miles	20.5	20.5	20	22	23	22.5	26.5	24
150 miles	24.5	25.5	26	27.5	29.5	26.5	31.5	30
200 miles	26.5	27.5	28	30.5	32	29.5	36.5	35
250 miles	28.5	29.5	30.5	33	34.5	33	40	39
300 miles	31	34	33	35	37	35.5	42.5	44
350 miles	33.5	37	34.5	37	38.5	39	46.5	48
400 miles			39	39	40.5	42.5	48.5	50
450 miles			43.5	43.5	42.5	45	51.5	53.5
500 miles			46	46	44.5	47.5	54.5	56
600 miles			57.5	57.5	48			61.5
700 miles					52.5			66
800 miles					56			70
900 miles					59			74
1,000 miles					63			79
1,100 miles					66.5			82
1,200 miles					70			86

APPENDIX B

Comparison of rates of progression of certain distance scales

Scale [1]	Rate for 100 miles	Progression for distances shown, over preceding distance					
		200 miles	300 miles	400 miles	500 miles	600 miles	700 miles
	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Southwestern scale (12338)	24	11	9	6	6	5.5	4.5
Shreveport scale (46 I.C.C. 312, 351)	27.5	6	6	5.5	3.5	3.5	4
M.-K.-T. scale, Kansas-Missouri	24¾	9.4	3.25				
M.-K.-T. scale in Kansas	22	7½	6.4	6.20			
M.-K.-T. scale, north Missouri	20.5	6.5	4.5	5			
M.-K.-T. scale, south Missouri	20.5	7.5	6	4.5			

[1] M.-K.-T. scales are reduced to cents per 100 pounds, based on 23,200 pounds per 36-foot car. The M.-K.-T. scale, Kansas-Missouri, also applies between Joplin, Mo., and same Missouri and Kansas destinations; north Missouri and south Missouri scales apply to St. Louis.

APPENDIX C

Comparison of southwestern lines' proposed scale with the southeastern scale on horses and mules increased 10 percent and with the southwestern horse and mule scale (rates in cents per 100 pounds)

Distance	Southwestern lines, proposed scale, column 45 or class A, single and joint	Southeastern or compromise scale increased 10 percent		Southwestern horse and mule scale	
		Single line	Joint line	Single line	Joint line
	Cents	Cents	Cents	Cents	Cents
5 miles	16	12	15.5	14	17.5
10 miles	17	14	17	14	17.5
15 miles	18	15.5	18.5	14.5	18.5
20 miles	19	16.5	20	15.5	19
25 miles	21	17.5	21	16	20.5
30 miles	22	18.5	22	17	20.5
35 miles	23	20	23	17.5	21
40 miles	24	21	24	18.5	22
50 miles	26	22.5	26	20.5	24
60 miles	28	24	27.5	21	25
70 miles	31	26	29	23	26.5
80 miles	32	27.5	31	24	27
90 miles	34	29	32.5	24	27
100 miles	36	31	34	24	27
110 miles	37	32	35	25	28
120 miles	39	33	36.5	26	29
130 miles	41	34	37.5	28	31
140 miles	42	35	38.5	29	32
150 miles	44	36.5	39.5	30	33
160 miles	45	37.5	41	31	34
170 miles	46	38.5	42	32	35
180 miles	47	39	42.5	33	36
190 miles	48	40	43.5	34	37
200 miles	49	41	43	35	38
210 miles	50	42	44	36	38
220 miles	51	43	45	37	39
230 miles	52	43.5	45.5	38	40
240 miles	54	44.5	47	39	41
250 miles	55	45	47.5	39	41
260 miles	55	47	49	40	42
275 miles	56	47	49	42	44
280 miles	58	48.5	50.5	42	44
300 miles	60	49.5	50.5	44	46
320 miles	62	49.5	51.5	46	48
325 miles	64	49.5	51.5	47	49
340 miles	64	50.5	53	47	49
350 miles	66	50.5	53	48	49
360 miles	66	51.5	53	48	49
375 miles	68	51.5	53	49	50
380 miles	68	53	54	49	50
400 miles	71	53	54	50	51
425 miles	74	54	55	52	53
450 miles	75	55	56	53.5	54.5
475 miles	77	56	57	55	56
480 miles	77	56	57	56	57
500 miles	78	59	59	56	57
510 miles	80.5	59	59	57.5	57.5
525 miles	81	59.5	59.5	57.5	57.5
540 miles	81	59.5	59.5	58	59
550 miles	83	60.5	60.5	59	59
570 miles	85	60.5	60.5	60	60
575 miles	85.5	62	62	60	60
600 miles	88	62	62	61.5	61.5
625 miles	90.5	63.5	63.5	63	63
630 miles	90.5	63.5	63.5	64	64
650 miles	91	65	65	64	64
660 miles	91	65	65	65	65
675 miles	93	66	66	65	65
690 miles	94	66	66	66	66
700 miles	94	67.5	67.5	66	66
720 miles	96	67.5	67.5	67	67
725 miles	97.5	67.5	67.5	67	67
750 miles	99.5	69	69	68	68
775 miles	100	70.5	70.5	69	69
790 miles	102	70.5	70.5	70	70

APPENDIX C—Continued

Comparison of southwestern lines' proposed scale—Continued

Distance	Southwestern lines proposed scale, column 45 or class A, single and joint	Southeastern or compromise scale increased 10 percent		Southwestern horse and mule scale	
		Single line	Joint line	Single line	Joint line
	Cents	*Cents*	*Cents*	*Cents*	*Cents*
800 miles	102	71.5	71.5	70	70
825 miles	104	71.5	71.5	71	71
830 miles	105.5	71.5	71.5	72	72
850 miles	105	73.5	73.5	72	72
870 miles	107	73.5	73.5	73	73
875 miles	107	75.5	75.5	73	73
900 miles	108	75.5	75.5	74	74
910 miles	109.5	75.5	75.5	75	75
925 miles	109	77	77	75	75
950 miles	111	77	77	76	76
975 miles	113	79	79	77	77
1,000 miles	114	79	79	78	78

APPENDIX D

Commodity	13535 ratings except horses and mules		Average or minimum weight	Rate per 100 pounds	Between Kansas City, Mo., and Fort Worth, Tex., distance 507 miles via M-K-T. lines				
	Commodity description number	Rate basis			Revenue per car	Empty mileage	Gross ton-miles	Revenue per gross ton-mile	Revenue per gross car-mile
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
			Pounds	*Cents*					
Horses and mules		45	23,000	79	$181.70	421	20,679	$0.0088	$0.195
Agricultural implements	1	40	29,000	70	203.00	124	19,441	.0104	.322
Bagging and ties	2	27.5	46,000	48	230.80	124	23,640	.0097	.366
Bags and bagging	3	35	46,000	62	285.20	124	23,640	.0120	.452
Tubs (butter)	4	45	[1] 16,000	79	126.40	124	16,045	.0078	.200
Beverages	5	35	46,000	62	285.20	124	23,640	.0120	.452
Broom corn	7	40	[1] 18,000	70	126.00	124	16,552	.0076	.200
Butter and eggs	8	60	22,000	106	233.20	368	30,077	.0077	.267
Canned goods	9	35	42,000	62	260.40	124	23,143	.0110	.412
Do	10	38	42,000	67	281.40	124	23,143	.0121	.445
Cans, drums	11	50	[1] 14,000	88	123.20	124	15,538	.0078	.196
Do	12	65	[1] 9,000	114	102.60	124	14,271	.0072	.162
Coffee, green	13	35	[1] 36,000	62	223.20	124	21,115	.0101	.343
Fertilizer	15	16	46,000	28	128.80	124	23,640	.0054	.204
Fruits, dried	16	38	50,000	67	335.00	124	30,748	.0108	.330
Furniture, new	21	60	14,000	106	148.40	124	15,538	.0096	.235
Glass bottles	22	38	35,000	67	234.50	124	20,862	.0112	.355
Iron and steel articles	24	32.5	56,000	57	319.20	124	28,185	.0012	.505
Iron scrap	25	17.5	79,000	31	244.90	124	32,016	.0076	.388
Junk	26	22.5	[1] 30,000	40	120.00	124	19,639	.0061	.190
Do	27	32.5	[1] 30,000	57	171.00	124	19,639	.0087	.270
Poultry, dressed	28	60	25,000	106	265.00	368	25,908	.0102	.303
Poultry, live	29	65	18,000	114	205.20	507	24,843	.0082	.202
Roofing material	30	25	48,000	44	211.20	124	24,157	.0087	.334
Soap	31	35	44,000	62	272.80	124	23,143	.0117	.432
Soda (nitrate)	32	17.5	46,000	31	142.60	124	23,640	.0060	.226
Starch	33	32.5	[1] 40,000	57	228.00	124	22,129	.0103	.360
Sulphuric acid in carboys	34	38	[1] 30,000	67	201.00	124	19,634	.0102	.318
Sugar	35	30	[1] 60,000	53	318.00	124	27,199	.0116	.504
Sirup and molasses	36	30	40,000	53	212.00	124	22,129	.0095	.235
Vinegar	37	35	[1] 30,000	62	186.00	124	19,639	.0094	.294

[1] Minimum weight.

U. S. GOVERNMENT PRINTING OFFICE: 1939

EXHIBIT B

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 11th day of December A. D. 1933

WESTERN HORSE AND MULE RATES

No. 12358
TEXAS LIVESTOCK SHIPPERS PROTECTIVE LEAGUE ET AL
V
DIRECTOR GENERAL, AS AGENT, ABILENE & SOUTHERN RAILWAY COMPANY ET AL

INVESTIGATION AND SUSPENSION DOCKET NO. 2389
RATES ON HORSES AND MULES TO, FROM, OR BETWEEN SOUTHWESTERN POINTS

No. 11018
WICHITA BOARD OF COMMERCE ET AL
V
DIRECTOR GENERAL OF RAILROADS, AS AGENT, ALEXANDRIA & WESTERN RAILWAY COMPANY ET AL

No. 12268
BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF SOUTH DAKOTA
V
CHICAGO AND NORTH WESTERN RAILWAY COMPANY ET AL

No. 13001
CHAMBER OF COMMERCE OF KANSAS CITY, MISSOURI
V
ALEXANDRIA & WESTERN RAILWAY COMPANY ET AL

No. 13273

NEBRASKA LIVESTOCK CASE
No. 13619
ROSS BROTHERS HORSE & MULE COMPANY ET AL
V
UNION PACIFIC RAILROAD COMPANY ET AL

No. 13627
BURNETT-YOUNT HORSE & MULE COMPANY ET AL
V
ABILENE & SOUTHERN RAILWAY COMPANY ET AL

Upon further consideration of the records in these proceedings and consideration of the petition of southwestern carriers for reconsideration, modification of findings, and further hearing, and of answers thereto filed by the Board of Railroad Commissioners of the State of South Dakota and the Kansas City Chamber of Commerce:

It is ordered, That the said petition be, and it is hereby, denied.

By the Commission:

(SEAL) GEORGE B. McGINTY,
Secretary.

EXHIBIT C

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 11th day of December A. D. 1933

WESTERN HORSE AND MULE RATES

No. 12358

TEXAS LIVESTOCK SHIPPERS PROTECTIVE LEAGUE ET AL

V

DIRECTOR GENERAL OF RAILROAD, AS AGENT, ABILENE & SOUTHERN RAILWAY COMPANY ET AL

INVESTIGATION AND SUSPENSION DOCKET NO. 1483

HORSES AND MULES FROM KANSAS CITY, MO., AND WICHITA, KANS., TO NEW ORLEANS, LA., MEMPHIS, TENN., AND OTHER POINTS.

INVESTIGATION AND SUSPENSION DOCKET NO. 2389

RATES ON HORSES AND MULES TO, FROM, OR BETWEEN SOUTHWESTERN POINTS